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No. 95-173

Supreme Court U.S.
FILED

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CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1995

BRIAN J. DEGEN, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

**On a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 4, 1995
CERTIORARI GRANTED JANUARY 12, 1996

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RELEVANT DOCKET ENTRIES

July 13, 1989	Complaint in Forfeiture in Rem filed under seal in United States District Court for the District of Nevada (CV-89-397-ECR)
October 24, 1989	Amended Complaint in Forfeiture in Rem filed (CV-89-397-ECR)
March 23, 1990	Second Amended Complaint in Forfeiture in Rem filed in United States District Court for the District of Nevada (CV-N-90-130-ECR)
May 2, 1990	Government's Motion to Strike Claims and Answer and Motion for Summary Judgment filed
December 12, 1990	Order denying with Respect to Karyn Degen Government's Motion to Strike Claims and Answers and Motion for Summary Judgment entered
January 4, 1991	Order granting with Respect to Brian Degen Government's Motion to Strike Claims and Answers and Motion for Summary Judgment entered
December 2, 1992	Government's Motion for Summary Judgment against Karyn Degen filed
June 24, 1993	Order granting Government's Motion for Summary Judgment against Karyn Degen filed
August 17, 1993	Amended Final Judgment in favor of Government entered

February 10, 1995

Opinion of the United States Court of Appeals for the Ninth Circuit filed

May 5, 1995

Order denying Rehearing, Rejecting Suggestion for Rehearing En Banc, and Amending Opinion of the United States Court of Appeals for the Ninth Circuit filed

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,) CV-N-90-130-ECR
Plaintiff,)
v.)
REAL PROPERTY LOCATED)
AT INCLINE VILLAGE (further)
described in Exhibit D);)
CALIFORNIA REAL) COMPLAINT FOR
PROPERTIES LOCATED in) FORFEITURE
HOMWOOD (further described) IN REM,
IN Exhibits G, H, I, J), LAKE) AFFIDAVIT
FOREST (further described in) and EXHIBITS
Exhibit K)) THERETO
HAWAII REAL PROPERTIES IN)
KAUAI, LOCATED AT)
3457 WAIKOMO ROAD (further)
described in Exhibit P) and)
5132 HOONA ROAD (further)
described in Exhibit Q);)
MISCELLANEOUS BUSINESS)
INTERESTS (further described)
in Exhibits S);)
MISCELLANEOUS SALES)
PROCEEDS PROPERTY)
INCOME (further described in)
Exhibits U),)

MISCELLANEOUS BANK)
 ACCOUNT BALANCES (further)
 described in Exhibits W) and)
)
 MISCELLANEOUS PERSONAL)
 PROPERTY (further described)
 in Exhibit X),)
)
 Defendants.)
 _____)

 March 23, 1990

COMES NOW the UNITED STATES OF AMERICA,
 by RICHARD J. POCKER, United States Attorney for the
 District of Nevada, through DOROTHY NASH HOLMES,
 Assistant United States Attorney, and files this verified
 Complaint for Forfeiture In Rem, and alleges as follows:

1. This Court has jurisdiction in this matter pursuant to
 28 U.S.C., Section 1345 and 1355 and 21 U.S.C., Section
 881.

2. This Court has venue pursuant to 28 U.S.C., Section
 1395 in that the defendant property described in Exhibits D
 and U attached hereto and incorporated by reference herein
 is now, and during the pendency of this action, will be in the
 District of Nevada and in the jurisdiction of this Court.

3. This Court has venue pursuant to 21 U.S.C. 881(j)
 in that while the remaining above-captioned defendant
 property described in the other Exhibits attached hereto and
 incorporated by reference herein is located in the States of
 California and Hawaii and the Country of Switzerland and the
 Grand Cayman Islands of the British West Indies, the known

owner of said property BRIAN JOHN DEGEN is under
 criminal indictment in the District of Nevada.

4. That a Complaint for Forfeiture *in Rem* was initially
 filed by plaintiff in this matter July 11, 1989 as case number
 CV-N-89-397-RDF and prior to service of said complaint an
 Amended Complaint for Forfeiture *in Rem* was subsequently
 filed October 24, 1989 and was designated CV-N-89-397-
 ECR.

5. That pursuant to F.R. Civ. P. 21, plaintiff
 voluntarily severed from case CV-N-89-397-ECR its claims
 to defendant assets sought in forfeiture from BRIAN JOHN
 DEGEN and by Order of the Court has filed said claims as
 a separate action under this caption and case number.
 Pursuant to said Order, pleading and documents applicable to
 the DEGEN-owned assets have been transferred by the Court
 clerk to this action. For consistency with previously filed
 pleadings or documents, however, exhibit designation letters
 referenced in the original case caption have not been changed.

6. The defendant property includes all surface estates,
 water rights and mineral rights, with buildings, appurtenances
 and improvements, and is more fully described in the Exhibits
 which are attached hereto and incorporated by reference
 herein.

7. The defendant property referenced in Exhibit S is
 owned by BRIAN JOHN DEGEN either personally, or in the
 name of the following various business interests:

KES, INC., a Cayman Islands Corporation
 PACIFIC BUILDERS
 PACIFIC DESIGN AND CONSTRUCTION CO.
 KOLOA SELF-STORAGE

8. That BRIAN JOHN DEGEN purchased or acquired
 the properties referenced herein from 1973 through 1989,
 paying for them in part or in total with the proceeds of

exchanges of controlled substances or funds traceable to exchanges of controlled substances.

9. That the real property of BRIAN JOHN DEGEN referenced herein has a total estimated value of \$5,544,000.

10. That the total value of the business interests, bank accounts, sales proceeds and property income and personal property of BRIAN JOHN DEGEN is not capable of determination at this time due to ongoing transfers and sales of property and withdrawals of bank account balances and other assets, but an estimate of the value of said interests will be provided to the Court as soon as a determination of it is made.

11. That the following liens have been determined with respect to the defendant property:

<u>ADDRESS</u>	<u>AMOUNT OF LIEN</u>
6668 West Lake Boulevard	\$52,000.
3457 Waikomo, Kauai	\$198,200.

12. The United States seeks forfeiture of all monies, income, interests, personal and real property described herein, including any right, title, and interest in the whole of any lot or tract and any appurtenances or improvements thereon, on the grounds that all of said property, as specified herein and in the affidavit of Dennis A. Cameron which is attached hereto and incorporated by reference herein, was purchased with funds traceable to exchanges of controlled substances and is subject to forfeiture pursuant to 21 U.S.C. 881(a)(6), and that said defendant property was also used or intended to be used to commit or to facilitate the commission of a controlled substances violation and is therefore subject to forfeiture pursuant to 21 U.S.C. 881(a)(7).

13. That BRIAN JOHN DEGEN formed the various business entities referenced herein as "fronts" to cover illegal narcotics activities and profits and thereafter used said entities

to conduct business and financial transactions and to purchase and sell real property, all in order to both facilitate and conceal marijuana smuggling and distribution activities and profits therefrom.

14. Pursuant to the provisions of 21 U.S.C. 881(h) all right, title and interest in the defendant property was vested in the United States at the time said property was used in violation of Title 21 as described herein and in the Affidavit of Dennis A. Cameron.

15. That said defendant property has been seized pursuant to order of Magistrate Phyllis Atkins of the District of Nevada.

WHEREFORE, the UNITED STATES OF AMERICA, prays as follows:

1. That process issue according to the procedures of this Court in cases involving actions in rem;

2. That any person having an interest in defendant property be given notice to file a claim and to answer this amended complaint;

3. That this Court enter judgment of forfeiture of defendant property in favor of the United States of America and direct the delivery of said property into the custody of the United States Marshal Service for disposition according to law;

4. That the Court enter a judgment divesting any and all other claimants of any right, title or interest in the defendant property and vesting the same in the United States of America; and

5. For costs and for such other and further relief as this Court may deem proper.

Dated: March 22, 1990

RICHARD J. POCKER
United States Attorney

/s/ Dorothy Nash Holmes
DOROTHY NASH HOLMES
Assistant United States Attorney
Organized Crime Drug
Enforcement Task Force

VERIFICATION

I, DENNIS A. CAMERON, Special Agent, Drug Enforcement Administration, declare under penalty of perjury as provided by 28 U.S.C. 1746, that the foregoing Complaint for Forfeiture In Rem is based upon reports and information furnished to me by agents and employees of the United States, and that everything contained therein is true and correct to the best of my knowledge and belief.

DATED: 3/21/90

/s/ Dennis A. Cameron
DENNIS A. CAMERON
Special Agent
Drug Enforcement Administration

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

AFFIDAVIT OF PROBABLE
CAUSE FOR FORFEITURE

March 23, 1990

Dennis A. Cameron, being first duly sworn, deposes and states:

1. That I am a Special Agent of the Department of Justice, Drug Enforcement Administration and have been a federal narcotics enforcement officer for nineteen (19) years. In my capacity as a Special Agent, I have received specialized training in law enforcement, particularly the enforcement of the laws regarding controlled substances and asset forfeitures as found in Title 21 United States Code. As a result of my training and in connection with my office, I have provided testimony before judicial officers involving prosecutions of individuals accused of violating the drug laws.

2. Based upon my training, experience and participation in numerous financial investigations involving large amounts of marijuana and/or other controlled substances, I know:

a. That drug traffickers often place assets in names other than their own (nominee names) to avoid detection of those assets by law enforcement agencies;

b. That drug traffickers often place assets in corporate entities in order to avoid detection of those assets by law enforcement agencies;

c. That even though these assets are in nominee names, drug traffickers continue to use these assets by exercising dominion and control over them;

d. That large scale drug traffickers maintain on-hand large amounts of United States currency in order to finance their ongoing drug business;

e. That when drug traffickers amass large proceeds from the sale of drugs, the drug traffickers attempt to legitimize these profits, i.e., "launder" them and they accomplish these goals by utilizing domestic and foreign banks and/or other financial institutions including the sales of securities, cashier's checks, money drafts, letters of credit, etc.; that other entities often used to "launder" monies include brokerage houses, real estate firms, shell corporations and purported legitimate business fronts;

f. That in the last ten (10) years or so, drug traffickers often utilized corporate entities and bank accounts in the Grand Cayman Islands as a refuge for their drug proceeds and more recently have begun to use Swiss bank accounts and financial transactions for the same purpose;

g. That the courts have recognized that unexplained wealth is probative evidence of crimes motivated by greed, in particular trafficking in controlled substances.

3. That the Ciro MANCUSO/Brian DEGEN drug trafficking organization has been investigated by the Drug Enforcement Administration (DEA) off and on over the last twenty (20) years and since 1985 the Nevada Organized Crime Drug Enforcement Task Force (OCDETF) has been actively investigating the historical and ongoing drug trafficking operations of this group.

4. That I am thoroughly familiar with the information contained in this affidavit either through personal investigation, debriefing of informants, or discussions with other special agents of the Drug Enforcement Administration, the Internal Revenue Service, the United States Customs Service and the United States Marshal's Service.

5. That Special Agent Richard A. Pierce of the United States Customs Service, who has been employed in that capacity by the Department of the Treasury for over five (5) years, has participated in this MANCUSO investigation and through his instruction, training and experience including over 1,600 hours of instruction at the Federal Law Enforcement Training Center at Glynco, Georgia and the United States Customs Service Academy in Arizona, is thoroughly familiar with the investigation of drug smuggling and distribution activities and related activities involving money laundering violations of Title 18, United States Code, Sections 1956 and 1957. Special Agent Pierce has provided your affiant with information contained within this Affidavit with respect to certain currency reporting violations and money laundering activities.

6. Through the MANCUSO investigation, your affiant has been in contact with a confidential informant (CI-1) who has worked with your affiant on this investigation over several years now. This informant has proved reliable in that he/she has provided information to DEA in twenty-five (25) separate investigations which have led to sixteen (16) convictions and the seizure and forfeiture of 6.2 million dollars in drug assets. This informant has provided your affiant with information he/she obtained in face-to-face undercover meetings with Ciro MANCUSO and he/she has also related, independently, his/her drug smuggling activities with MANCUSO and DEGEN prior to his/her period of cooperating with the United States Government.

7. Further, your affiant has reviewed official certified documents provided by the Government of the Grand Cayman

Islands to the United States, pursuant to a treaty enforced between our countries, relative to the financial and corporate transactions of Ciro MANCUSO and his wife Andrea MANCUSO, in the name of KEYSTONE INVESTMENTS, LTD., a corporation they formed in the Cayman Islands, and your affiant has also reviewed records of the bank account for KEYSTONE INVESTMENTS established by the MANCUSOs at Bank of Nova Scotia in the Grand Cayman Islands.

8. Your affiant has reviewed official certified documents provided by the Government of the Grand Cayman Islands to the United States, pursuant to a treaty enforced between our countries, relative to the corporate transactions of Brian DEGEN and Karyn Peterson DEGEN in the name of K.E.S. Corporation, a corporation they formed in the Cayman Islands.

9. Your affiant has also reviewed official documents provided to the United States by the Swiss Government, pursuant to a treaty between our countries, relative to the financial dealings of Ciro MANCUSO, CIRO MANCUSO PROPERTIES, INC., ALZIRA, and other business entities known to be utilized by Ciro MANCUSO in Zurich, Switzerland. In addition, investigators have provided your affiant with information received from a confidential informant (CI-2), regarding the Swiss transactions.

10. Your affiant has also been provided, pursuant to a Court authorized Order, income tax returns filed by Ciro MANCUSO and Brian DEGEN during the years which are the subject of this investigation, and your affiant has reviewed business records provided, pursuant to Grand Jury subpoena by Ciro MANCUSO and his accountant, Charles W. ROTH, and by DEGEN's accounting firm as well.

11. Official government records from Cloud County, Kansas indicate that Ciro Wayne MANCUSO and Brian John DEGEN were arrested in August, 1969 and charged with

harvesting marijuana in the State of Kansas. They were then 21 years old.

12. From that time to approximately 1971, CI-1 has advised your affiant that he/she was involved in smuggling marijuana with MANCUSO and DEGEN via private aircraft from Mexico to the United States. He/she has stated that they smuggled approximately 50 airplane loads of marijuana from Mexico to the State of Nevada where the marijuana would be off-loaded from the aircraft on dry lake beds, and then transported by trucks to the Santa Cruz, California where it would be distributed. This informant has stated that the average amount of marijuana per planeload ranged from 350 to 800 pounds, depending upon size of the aircraft, and that total marijuana smuggled during this period was approximately 35,000 pounds. The 35,000 pounds of marijuana smuggled by the organization during this time period had a wholesale value in the United States of \$225.00 per pound for a total value of \$7,875,000.00 gross, according to CI-1. This informant has further stated that he/she ceased the drug smuggling business with the MANCUSO organization in 1971 because MANCUSO moved to Guadalajara, Mexico to establish himself as a marijuana broker there.

13. DEA reports and State Department cable, together with information provided by numerous informants who participated with MANCUSO in Mexico drug trafficking, reveal that Ciro MANCUSO was arrested in March, 1972 in Guadalajara, Jalisco, Mexico, with ten (10) other individuals, four (4) of whom were United States citizens. At that time, 4,400 pounds of marijuana were seized. Also seized was a Cessna aircraft, number N2679R, which was registered to Ciro MANCUSO's father in California. As a result of that arrest, Ciro MANCUSO was in jail in Mexico until approximately May of 1973 when he was released. Your informant has interviewed members of the MANCUSO organization who are now cooperating witnesses, who advised

your affiant that MANCUSO continued to deal marijuana from jail in Guadalajara, Mexico and that he was allowed to operate a furniture business from within the jail. The furniture was used as a vehicle for shipping marijuana to the United States from Mexico. Further, according to CI-1, MANCUSO told CI-1 that when MANCUSO was released from jail, he recovered 4,000 pounds of marijuana hidden in a false wall in his residence in Guadalajara, Mexico. This marijuana had not been located when MANCUSO was arrested. For that day forward, MANCUSO made a habit of storing marijuana in false walls.

14. Two (2) separate witnesses have informed investigators that they were hired by MANCUSO and DEGEN during 1974 to install secret compartments into travel trailers which were used to import marijuana from Mexico. Both witnesses indicate that MANCUSO and DEGEN successfully imported many loads of marijuana during 1974 in this manner.

15. Your affiant has learned from CI-1 that MANCUSO had told CI-1 that in 1976, MANCUSO and DEGEN arranged for one of the altered travel trailers to journey to Thailand and return with one ton of marijuana, which was sold for \$1,800.00 per pound for a total gross profit to MANCUSO of \$3,960,000.00. At the same time, MANCUSO and others arranged for a similar travel trailer operation to travel to Morocco to obtain a load of hashish which was to be transported through Europe and back to America. This particular vehicle was towed with an automobile driven by Carol FOLEY and Siddell (Sue) DEAN and FOLEY's son. They were arrested in Marseilles, France when over 500 kilograms of hashish were discovered. They subsequently spent over three (3) years in prison in France for this drug transporting offense. They have been interviewed and reported to investigators that the controlled substances were an operation of "CIRO and BRIAN".

16. United States Customs and DEA reports revealed that in the Summer of 1977, a boat identified as the "DRIFTER" successfully off-loaded one ton of marijuana in the San Francisco Bay area. Ciro MANCUSO and Brian DEGEN planned, paid for and transported this boat and subsequently distributed the marijuana received therefrom, according to the co-conspirators who took part. Several individuals who participated in that operation have advised investigators of their specific activities in the Spring and Summer of 1977 both preparing for the smuggling operation, traveling to Thailand and sailing the boat back to America and off-loading it. In addition, Customs authorities in San Francisco seized the "DRIFTER" after the Coast Guard did a routine search and found over fifteen (15) pounds of marijuana hidden under the floorboards of the boat. Crew members advise officers that one ton of marijuana had earlier been removed, but a crew member was attempting to hide his own personal portion of that marijuana and forgot that he had hidden it under the floorboards. When it was discovered, two (2) individuals were arrested, subsequently prosecuted and sentenced to prison. Federal authorities have debriefed those individuals and obtained statements regarding their participation and have also obtained documents corroborating the various steps of the smuggling operation. The one metric ton of marijuana imported on the "DRIFTER" would have sold for \$1,800.00 per pound for a gross profit to MANCUSO of \$3,915,000.00, according to CI-1.

17. CI-1 has informed your affiant that he/she continued to deal in marijuana over the years and during 1979, he/she smuggled 15,000 pounds of marijuana into the United States and he/she utilized the MANCUSO/DEGEN organization to distribute approximately 7,000 pounds of this marijuana for a gross profit to the organization of \$9,800,000.00. He/she indicates that other individuals involved with MANCUSO at that time included Edwin James VALLIER and others.

18. In December, 1979, Ciro MANCUSO and Andrea MANCUSO, according to real estate transaction documents, deeded a lot at 738 Tina Court, Lake Tahoe, to KALEIDOSCOPE, INC., a Cayman Island corporation formed by Marcus ZYBACH. Co-conspirators have told agents that Marcus ZYBACH is an "engineer" and "pilot" who has brought numerous vessels with marijuana over from Thailand to the United States. MANCUSO stated in conversations with CI-1, operating in an undercover capacity, that ZYBACH "skipped" several loads of marijuana for him/her and was paid \$1,000,000.00 a year for his services.

19a. An anonymous informant telephoned Drug Enforcement Administration officers and reported that in June, 1980, he witnessed Ciro MANCUSO making a payment of \$500,000.00 in cash at his Lake Tahoe house to an unidentified white male. The same individual subsequently reported that within one week, he observed Brian DEGEN and a man identified as Jurgen Karl Peter AHRENS, aka: "Joe the German". AHRENS (identified by numerous informants as an "engineer" who organizes the marijuana smuggling loads from Thailand) met with two (2) Thai males at DEGEN's residence at Lake Tahoe. He observed a suitcase full of U.S. currency located in DEGEN's wine cellar and the suitcase was later picked up by "Joe the German".

19b. Agents subsequently learned that this informant, Dennis MARR, has more recently stated that he provided this information to DEA as a result of his drug arrest in Canada. He now states that he earlier reported hearsay he had learned from MANCUSO/DEGEN associates. He now states that because he was always paid for construction work in "musty-smelling damp cash that appeared to have been buried in the ground", he assumed the suitcase was full of such cash because it smelled the same. He now denies, however, actually personally seeing the \$500,000.00.

20. A review of the corporation records provided by the Cayman Islands government indicates that on August 22, 1980, Ciro and Andrea MANCUSO opened a corporation they named KEYSTONE INVESTMENTS LIMITED in the Grand Cayman Islands. They capitalized this corporation with \$900,000.00 in U.S. currency and named themselves as directors.

21. On September 9, 1980, according to the Cayman Islands records, the MANCUSOs opened a bank account at Bank of Nova Scotia for KEYSTONE INVESTMENTS, LIMITED, with an initial deposit of \$290,000.00. At the same time, Ciro MANCUSO directed that a wire transfer be made sending \$284,000.00 to Douglas County, Nevada, for a real estate transaction. Those real estate transaction records reveal that Ciro MANCUSO purchased property at Dorla Court from Jurgen Karl Peter AHRENS.

22. Official certified corporate documents from the Cayman Islands reveal in June 1980, Brian DEGEN formed a Cayman Islands corporation named K.E.S. Property transaction records verify that beginning in 1981, Brian DEGEN purchased real estate on the island of Kauai in Hawaii in the name of K.E.S.

23. Real estate transaction records also reveal that in 1980, Brian DEGEN deeded a lot at South Benjamin Street, Lake Tahoe, Nevada to KALEIDOSCOPE, INC., Marcus ZYBACH's Cayman Islands corporation. The real estate transactions between MANCUSO, DEGEN and KALEIDOSCOPE were all handled by Elizabeth "Becky" DARROW, Ciro MANCUSO's sister.

24. An examination of MANCUSO's KEYSTONE bank account records in the Cayman Islands reveals that from 1980 through 1982, MANCUSO purchased numerous 30 day Certificates of Deposit as follows:

DATE	AMOUNT
11/06/80	\$ 99,000.00
01/16/81	\$227,104.00
07/15/81	\$607,260.00
08/17/81	\$198,000.00
04/22/82	\$ 97,020.00
04/23/82	\$542,983.33
04/23/82	\$435,290.75

These Certificates of Deposit were all one month certificates which were rolled over each time they matured until May, 1983, when Ciro MANCUSO directed that a wire transfer be made sending \$800,000.00 to a bank account in Zurich, Switzerland established in the name of ALZIRA, a Panamanian corporation he had caused to be established for himself.

25. Ciro MANCUSO's reported adjusted gross income during the corresponding periods is as follows:

DATE	INCOME
1980	\$ 97,703.00
1981	\$ 44,737.00
1982	\$116,834.00

26. Cayman Island records and real estate transaction documents reveal that in July, 1981, Ciro MANCUSO "loaned" himself, in the name of Keystone INVESTMENTS, \$191,195.72 which he used to purchase a lot in Hawaii. In September, 1981, according to Cayman Island records, MANCUSO ordered, by letter, the wire transfer of \$142,657.00 from the KEYSTONE bank account to a boat dealer in the United States for the purchase of a 32 foot Blackfin boat. Real estate and income tax records also reveal that during the time period 1980 through 1983, Ciro MANCUSO purchased numerous pieces of property at Lake Tahoe, Nevada and California as well.

27. On September 9, 1981, a Thai male identified as Sunthorn KRAITAMCHITKUL was arrested by U.S. Customs officials in San Francisco when he was found to be carrying \$831,165.35 in unreported currency. The money was seized from him together with a briefcase. The briefcase was found to be locked and the combination on the briefcase was ultimately determined to be Ciro MANCUSO's birth date. Found in the briefcase in Sunthorn's possession was a copy of the MANCUSO letter directing the transfer of the money from KEYSTONE for the purchase of the 32 foot Blackfin boat. Also found was some currency from the Cayman Islands, business cards of Ciro MANCUSO, Andrea MANCUSO, Brian DEGEN and others associated with the organization. Further investigation revealed that Sunthorn had stayed as a guest at MANCUSO's house in Hawaii. In subsequent undercover conversations with CI-1, MANCUSO identified Sunthorn as one of his sources in Thailand for the purchase of marijuana and stated that at one point in time, he had given Sunthorn some \$3,000,000.00 in cash. Shortly after his arrest in San Francisco, Sunthorn died of a heart attack.

28. Real estate transaction records for the period 1979 through 1983 reveal that Brian DEGEN was involved in numerous property transactions in Nevada, California and Hawaii, the sum total of which appeared to exceed his reported legitimate income. During this same time frame, his reported adjusted gross income was as follows:

DATE	AMOUNT
1979	\$45,071.00
1980	\$48,216.00
1981	\$ 7,764.00
1982	[\$ 4,287.00]
1983	\$23,490.00

As MANCUSO did, DEGEN also began to operate as a builder and real estate developer, constructing buildings and "spec homes".

29. On May 17, 1983, according to records from the Secretary of State of Nevada, Ciro MANCUSO incorporated CIRO MANCUSO PROPERTIES, INC., listing himself as president and his sister, Becky DARROW, as secretary. Thereafter, MANCUSO conducted most of his financial transactions in the name of that corporate entity and also began to purchase additional property and develop homes and subdivisions in that name and in the name of various other partnerships he established with others.

30. Throughout the remainder of 1983, MANCUSO ordered several more transfers of money from the KEYSTONE Cayman Islands bank account to the ALZIRA bank account in Switzerland. Wire transfers from the Cayman Islands bank account to the Swiss account are as follows:

DATE	AMOUNT
07/05/83	\$102,538.15
12/19/83	\$125,000.00
01/19/84	\$625,000.00

31. Records from the Cayman Islands indicate that on September 28, 1984, a board of directors meeting was held with Ciro and Andrea MANCUSO for KEYSTONE INVESTMENTS. A memorandum from that meeting indicates that MANCUSO was "nervous after speaking to his attorney in the United States of the new narcotics agreement with the United States". The memo goes on to indicate that MANCUSO then stated he was "only nervous insofar as this might be extended into other investigatory matters". On that same date, Ciro MANCUSO wrote a letter directing that his Certificate of Deposit accounts for KEYSTONE be closed, and a draft was then issued in the amount of \$717,221.22.

Subsequently, on October 5, 1984, Ciro and Andrea MANCUSO resigned as directors of KEYSTONE INVESTMENTS. They were replaced by Deborah DELONG and Jurg SCHUCH. According to Grand Cayman Island documents and Nevada real estate records, DELONG had previously handled MANCUSO property transactions and SCHUCH was a bank trust officer at the Zug branch of Nordfinanz, the bank which held the ALZIRA account in Switzerland. Subsequent transfers from the KEYSTONE bank account to the ALZIRA Swiss account were accomplished such that in July, 1983, \$104,464.90 was transferred to ALZIRA and in December, 1983, \$124,937.50 was transferred into the ALZIRA account. Total deposits to the Swiss account for 1983 were \$979,402.40, according to bank records from both the Cayman Islands and Switzerland.

32. Subsequent deposits in the following years to MANCUSO's ALZIRA Swiss bank account total as follows:

DATE	AMOUNT
1984	\$1,442,925.61
1985	\$ 70,480.64
1986	\$ 786,374.85
1987	\$ 353,507.50
1988	\$ 660,080.00

Total deposits to the ALZIRA bank account from 1983 through 1988 are more than \$4.29 million. An examination of the bank account records for ALZIRA has indicated that during the course of these years, numerous Certificates of Deposit were purchased and reinvested, as had been done in the Cayman Islands account. Total interest earned on the Swiss bank account during the years referenced herein was more than \$592,307.00.

33. Ciro MANCUSO's adjusted gross income during the corresponding period is as follows:

DATE	INCOME
1983	\$ 47,989.00
1984	\$ 64,704.00
1985	\$105,298.00
1986	(No return filed)

DATE	INCOME
1987	(No return filed)
1988	(No return filed)

34. An examination of the records of Brian DEGEN provided by his accounting firm pursuant to Grand Jury Subpoena, revealed a financial statement prepared in 1986 assessing DEGEN's net worth at \$2,133,353.00. Yet, DEGEN's reported adjusted gross income from his tax returns during the years 1984 through 1986 is as follows:

DATE	INCOME
1984	\$21,629.00
1985	\$75,217.00
1986	\$31,971.00

35. A convicted drug dealer, Edwin James VALLIER, has advised federal agents that he distributed marijuana for the MANCUSO and DEGEN organization over a twenty (20) year period ending in 1986. He said he distributed primarily in Northern California and the Lake Tahoe, Nevada area. VALLIER advised agents that he participated in off-load and distribution of marijuana smuggling ventures in 1985 and 1986, and two (2) of the individuals to whom he distributed marijuana in 1985 and 1986 have corroborated his statements.

36. Three (3) other individuals who participated in marijuana smuggling ventures with the MANCUSO/DEGEN organization have also advised agents of marijuana shipments

which were successfully imported from Thailand in 1985 and 1986. These ships arrived in the San Francisco Bay area, were off-loaded onto smaller boats which proceeded up to the Stockton, California Delta area where the marijuana was off-loaded onto trucks and shipped to "stash houses" in Northern California. On May 9, 1989, a federal search warrant was executed on one such "stash house" in Northern California and agents discovered, among other things, a vacuum sealing machine, a van truck containing marijuana residue, sailing charts of the Stockton Delta, a notebook containing law enforcement radio frequencies, clothing with insignias of the Cayman Islands, and an area in the garage where a false wall had been built to contain the marijuana which was stored there. Both DEGEN and MANCUSO were identified by members of the MANCUSO organization who are now cooperating witnesses as being at and responsible for marijuana ventures in 1985 and 1986 that used this "stash house".

37. Former MANCUSO/DEGEN organization members, Jay GRIFFIS and Michael MARKOVICH, who participated in marijuana smuggling ventures in California and Oregon, and who have subsequently pled guilty to controlled substance violations therefrom, and who are now cooperating with the government, have advised agents that in 1987 marijuana shipments attributable to the MANCUSO/DEGEN organization sailed from Thailand to Gold Beach, Oregon. Agents have identified the sailing vessels "ELMOS FIRE" and "JAPY HERMES" as having transported 15 metric tons of marijuana to that area. On June 21, 1987, the U.S. Coast Guard and Oregon State Police seized the marijuana which had been transported on the "ELMOS FIRE". The participants have advised agents that over a few weeks period, \$12,000,000.00 was collected in cash from the distributions of that remaining marijuana and that in June, 1987, at least \$2.5 million in cash was delivered to Jeffrey WELCH, a MANCUSO associate, for delivery to Ciro MANCUSO, at a

prearranged rendezvous which had been set up in a telephone call directly to MANCUSO.

38. Property purchased by Ciro MANCUSO after his release from Mexican jail until the present time includes:

1. 300 or 308 Dorla Court, Elk Point Plaza, Zephyr Cove, Nevada (held in the name of Elk Point Plaza Partnership);
2. Airport Business Center, Truckee Airport, Truckee, California (held in the name of Airport Business Center);
3. Airport Commerce Building, Truckee Airport, Truckee, California (held in the name of Airport Commerce Building);
4. 1695 Squaw Summit, Olympic Valley, California;
5. 150 Ohana Street, Wailua, Kauai, Hawaii;
6. 4915 San Souci Terrace and 4905 West Lake Boulevard, Homewood, California;
7. Lot 1, Squaw Summit, Olympic Valley, California (held in the name of CIRO MANCUSO PROPERTIES, INC.);
8. Hidden Lake Properties Development, Squaw Valley, California (held in the name of Hidden Lake Properties, Inc.);
9. 4 parcels located on South Sutro Terrace, Carson City, Nevada;
10. 310 and 312 Dorla Court, Elk Point Plaza, Zephyr Cove, Nevada (held in the name of Elk Point Plaza Partnership);

39. According to real estate records, through the years MANCUSO has transferred several properties to various buyers. Of the lots he developed in the Makana Subdivision

and Olympic Valley, California, Ciro MANCUSO has had property income through second trust deeds as follows:

Makana Subdivision:

1. \$68,400.00 note and second trust deed dated 4/27/84 from Clyde and Mary Ishida and secured by Lot 8B, Makana Subdivision.
2. \$106,200.00 note and second trust deed dated 12/4/86 from Ed and Vicky Taylor and secured by Lot 8G, Makana Subdivision.
3. \$292,500.00 note and second trust deed dated 4/27/84 from William and Linda Waialeale and secured by Lot 8D, Makana Subdivision.
4. \$82,000.00 note and second trust deed dated 5/9/84 from Terry J. Bergstrom and secured by Lot 8F, Makana Subdivision.
5. \$108,000.00 note and second trust deed dated 9/28/84 from Christopher and Diana Hayden and secured by Lot 8J, Makana Subdivision.
6. \$70,000.00 note and second trust deed dated 6/5/86 from Thomas Summers and secured by Lot 8A, Makana Subdivision.
7. \$68,250.00 note and second trust deed dated 3/27/86 from Vince Ortolano and Nadine Clapp and secured by Lot 8E, Makana Subdivision.
8. \$210,000.00 note and second trust deed dated 5/20/86 from Dale and Eileen Winters and secured by Lot 8H, Makana Subdivision.

Olympic Valley:

1. \$117,500.00 note and second trust deed dated 6/24/86 from Gordon Mc Mahon and secured by Lot 8 and 1/8 of Lot A, Squaw Summit.

40. Property purchased by Brian DEGEN in the time frame referenced herein includes:

1. 4915 San Souci Terrace and 4905 West Lake Boulevard, Homewood, California;
2. 1059 Tomahawk Trail, Incline Village, Nevada;
3. 6660 West Lake Boulevard, Homewood, California;
4. 6664 West Lake Boulevard, Homewood, California;
5. 6668 West Lake Boulevard, Homewood, California;
6. 3060 and 3080 North Lake Boulevard, Lake Forest, California;
7. 3457 Waikomo Road, Koloa, Kauai, Hawaii;
8. 5132 Hoona Road, Koloa, Kauai, Hawaii (held in the name of K.E.S. Corporation);

41. Your affiant has learned from review of title search documents that subsequent to the initiation of the Federal Grand Jury investigation in Reno, Nevada in June 1988, both Ciro MANCUSO and Brian DEGEN have begun to transfer assets out of their names and into the names of other family members or third parties. Federal agents have recently learned that MANCUSO's property at 150 Ohana in Kauai is currently in escrow. Agents have also learned that Brian DEGEN's mini storage business at Koloa Self Storage located at 3456 Waikomo is also on the market and may go into escrow in the very near future. Agents have also learned through informants that Ciro MANCUSO had been offering to cash out his second trust deeds on the Makana Subdivision at discounted prices in an effort to divest himself of the assets.

42. Based upon the foregoing, your affiant has probable cause to believe that Ciro MANCUSO and Brian John

DEGEN have both acquired assets and property with proceeds of drug exchanges in violation of 21 USC, Sections 841, 846, 952 and 953 and that all said property is forfeitable to the United States pursuant to 21 USC, Section 881(a)(6) and 21 USC 853 and 848.

/s/ Dennis A. Cameron

Dennis A. Cameron, Special Agent
Drug Enforcement Administration

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

ANSWER TO COMPLAINT
FOR FORFEITURE IN REM

April 6, 1990

COMES NOW claimant, BRIAN J. DEGEN, through his attorney of record, Donald H. Heller of the law firm of DONALD H. HELLER, A LAW CORPORATION, and files this answer to Complaint For Forfeiture In Rem, and alleges as follows:

I

1. In answering paragraph 1, claimant admits that jurisdiction is proper pursuant to 28 U.S.C. §§ 1345 and 1355, and denies that jurisdiction is proper under 21 U.S.C. § 881.

2. In answering paragraph 2, this answering claimant admits each and every allegation contained therein.

3. In answering paragraph 3, this answering claimant admits that he is the co-owner of the properties listed in all Exhibits in the Complaint For Forfeiture In Rem, and that this claimant further admits that he is under criminal indictment in the District of Nevada and denies each and every remaining allegation in paragraph 3.

4. In answering paragraph 4, this answering claimant admits the averments stated therein.

5. In answering paragraph 5, this answering claimant admits the averments stated therein.

6. In answering paragraph 6, this answering claimant admits all of the allegations contained therein.

7. In answering paragraph 7, this answering claimant admits that PACIFIC BUILDERS is a d/b/a of claimant's and is a business entity separate and apart from PACIFIC BUILDERS, INC., which claimant has no ownership interest in. Claimant further admits that he is the co-owner of KOLOA SELF-STORAGE as well as that he is the beneficial owner of all of the stock of KES Corporation. Claimant denies each and every remaining allegation in paragraph 7.

8. In answering paragraph 8, this answering claimant denies that he purchased or acquired the properties referenced in the Complaint For Forfeiture In Rem from 1973 through 1989 by paying for them in part or in total with the proceeds of exchanges of controlled substances or funds traceable to exchanges of controlled substances.

9. In answering paragraph 9, this answering claimant lacks sufficient knowledge or information to form a belief as to the truth of the allegations asserted in paragraph 9 and based on said ground denies each and every allegation in paragraph 9.

10. In answering paragraph 10, this answering claimant lacks sufficient knowledge or information to form a belief as to the truth of the allegations asserted in paragraph 10 and based on said ground denies each and every allegation in paragraph 10.

11. In answering paragraph 11, this answering claimant lacks sufficient knowledge or information to form a belief as to the truth of the allegations asserted in paragraph 11 and based on said ground denies each and every allegation in paragraph 11.

12. In answering paragraph 12, this answering claimant denies each and every allegation in paragraph 12.

13. In answering paragraph 13, this answering claimant denies each and every allegation in paragraph 13.

14. In answering paragraph 14, this answering claimant denies each and every allegation in paragraph 14.

15. In answering paragraph 15, this answering claimant admits each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

The Complaint For Forfeiture In Rem fails to state facts sufficient to constitute a cause of action upon which relief may be granted against the defendant properties listed in Exhibit "A" of this claimant's Claim to Property, filed with the court on April 6, 1990.

SECOND AFFIRMATIVE DEFENSE

The claims for forfeiture as alleged in the Complaint For Forfeiture In Rem are barred by statute of limitation provisions set forth in 19 U.S.C. § 1621; 21 U.S.C. § 881; 28 U.S.C. § 2462, insofar as the Complaint relates to any or all of the defendant properties listed in Exhibit "A" in this claimant's Claim to Property filed with the court on April 6, 1990.

THIRD AFFIRMATIVE DEFENSE

The claims as alleged in the complaint For Forfeiture In Rem are barred as violative of Article 1, Section 9, Clause 3 of the United States Constitution prohibiting enactment of ex-post facto laws.

FOURTH AFFIRMATIVE DEFENSE

The conduct, omissions, and/or wrongful activity alleged by the plaintiff, if any there be, as they relate to the defendant properties listed in Exhibit "A" of this claimant's Claim to Property filed with the court on April 6, 1990, were so minimal in breadth, quantity, and scope, as to make

forfeiture excessively harsh and outside the intended scope of 21 U.S.C. §881 and therefore forfeiture in this matter would be unconscionable.

FIFTH AFFIRMATIVE DEFENSE

The cause of action alleged in the Complaint For Forfeiture In Rem is barred by reason of the Doctrine of Laches.

SIXTH AFFIRMATIVE DEFENSE

The complaint fails to set forth a factual basis to support probable cause for the seizure and forfeiture of the property listed in Exhibit A to claimant's claim for property.

SEVENTH AFFIRMATIVE DEFENSE

The complaint and attachments thereto fails to set forth probable cause for the seizure of each specified piece of real and personal property singularly or collectively listed in Exhibit A to claimant's Claim for Property.

EIGHTH AFFIRMATIVE DEFENSE

The factual basis for seizure of the property seized as described in Exhibit A to Claimant's Claim to Property was obtained in violation of the Fourth Amendment to the Constitution of the United States of America and accordingly all properties must be returned to claimant.

WHEREFORE, this answering claimant prays that:

1. Plaintiff the UNITED STATES OF AMERICA take nothing against the defendant properties listed in Exhibit "A" of this claimant's Claim to Property filed with the court on April 6, 1990 by virtue of its Complaint For Forfeiture In Rem;

2. Claimant recover the costs of suit, all income and profit derived from the government's possession of the property listed in Exhibit A to Claimant's claim, and attorney's fees according to proof; and

3. The Court grant such other and further relief to the claimant as it may deem just.

DATED: April 5, 1990 DONALD H. HELLER
A LAW CORPORATION

BY: /s/ Donald H. Heller
DONALD H. HELLER

VERIFICATION

I, BRIAN DEGEN, declare as follows:

I am a citizen of the country of Switzerland, and currently reside in Verbier, Switzerland.

I have read the foregoing answer and know the contents thereof, and the same is true of my own knowledge, except as to all matters therein stated upon information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this verification was executed on March 30, 1990, in Verbier, Switzerland.

/s/ Brian Degen

BRIAN DEGEN

(Affidavit of service omitted in printing)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

(Title Omitted in Printing)

CLAIM TO PROPERTY

April 6, 1990

COMES NOW BRIAN J. DEGEN, through his attorney of record, Donald H. Heller of DONALD H. HELLER, A LAW CORPORATION, and states that he is the co-owner of the defendant properties, and/or all interest in the proceeds of the sale of the defendant properties, listed in Exhibit A to this claim, and makes a claim, demands restitution, and the right to defend said properties, and/or all interest in the proceeds of the sale of the defendant properties, as the same are arrested at the instance of the UNITED STATES OF AMERICA, plaintiff.

The claimant further avers that he was at the time of the filing of the Complaint herein, and still is, the true and bona fide co-owner of the defendant properties, and/or all interest in the proceeds of the sale of defendant properties, listed in Exhibit A attached hereto.

THEREFORE, the demand for restitution and the right to defend is prayed for accordingly.

DATED: April 5, 1990 DONALD H. HELLER
A LAW CORPORATION

BY: /s/ Donald H. Heller
DONALD H. HELLER

EXHIBIT "A"

I. REAL PROPERTY INTEREST AND PROCEEDS FROM THE SALE OF REAL PROPERTY.

1. Properties located at and/or the proceeds from the sale of 4915 San Souci Terrace and 4905 West Lake Blvd., Homewood, California, as described in Exhibit G to the Complaint;
2. 1059 Tomahawk Trail, Incline Village, Nevada, as described in Exhibit D to the Complaint;
3. 6660 West Lake Blvd., Homewood, California, as described in Exhibit H to the Complaint;
4. 6664 West Lake Blvd., Homewood, California, as described in Exhibit I to the Complaint;
5. 6668 West Lake Blvd, Homewood, California, as described in Exhibit J to the Complaint;
6. 3060 and 3080 North Lake Blvd., Lake Forest, California, as described in Exhibit K to the Complaint;
7. 3457 Waikomo Road, Koloa, Kauai, Hawaii, as described in Exhibit P to the Complaint;
8. 5132 Hoona Road, Kauai, Hawaii, as described in Exhibit Q to the Complaint;
9. Proceeds from the sale of 623 Alma Way, Zephyr Cove, Nevada, as described in Exhibit U to the Complaint;
10. Proceeds from the sale of 4515 and 4520 Interlaken Road, Tahoe City, California, as described in Exhibit U to the Complaint;
11. Proceeds from the sale of 1180 Big Pine Drive, Tahoe City, California, as described in Exhibit U to the Complaint;

12. Proceeds from the sale of 389 Alder Court, Include Village, Nevada, as described in Exhibit U to the Complaint;
13. Proceeds from the sale of 5166 Lawaii Road, Kauai, Hawaii, as described in Exhibit U to the Complaint.

II. BUSINESS INTERESTS

1. Koloa Self-Storage;
2. Pacific Builders;
3. Brian Degen Design and Construction;
4. Office Complex at 3060 - 3080 North Lake Boulevard, Lake Forest, Tahoe City, California;
5. 1059 Tomahawk Trail, Incline Village, Nevada;
6. KES, a Cayman Islands Corporation.

III. BANK ACCOUNTS

1. First Hawaiian Bank (Koloa Branch) Account Numbers:
 23-022923 Koloa Self-Storage/Brian Degen
 23-248816 Brian and Karyn Degen
2. Bank of America Account Numbers:
 05710-07304 Brian and Karyn Degen
 (Fruitridge Manor, Sacramento, California)
 06099-01369 Brian and Karyn Degen
 (Tahoe City, California)

IV. MISCELLANEOUS PERSONAL PROPERTY

1. All personal property and belongings contained in or in the possession of the defendant property, interest, business interest, and residences listed in Items I, II, and III as well as any and all interest in the following:

1. 1980 Case Tractor Model (plow bucket and snow chains) 1845 Serial No. 9851211; DEA Seizure No. 71393;
2. 1980 Blue Ford Pickup, License No. 839 KAA, Hawaii; DEA Seizure No. 71267;
3. 1987 Brown Jeep Wrangler, License No. KEC 435, Hawaii; DEA Seizure No. 71269;
4. 1982 Maroon Oldsmobile Cutlass Cruiser Station Wagon, License No. BGE 157, Hawaii; DEA Seizure No. 71273;
5. J.I. Yellow Case Back Hoe Tractor, Model No. 5806, Serial No. 5336127; DEA Seizure No. 71651;
6. 1984 Blue Ford Pickup 4x4, License No. 871 AMB, Nevada; DEA Seizure No. 69775;
7. 1982 Silver Volvo Station Wagon, License No. 1EKX571, California; DEA Seizure No. 69776;
8. 1 Chinese wool pile rug 9' x 12'; DEA Seizure No. 71650;
9. Thirteen (13) piece upholstered Rattan living room set; DEA Seizure No. 71649;
10. 1198 Bottles of wine; DEA Seizure No. 71392;
11. Gym equipment; DEA Seizure No. 71391;
12. 1 Dining room set (1 dining table, 8 chairs), "Old Dominion" by Kittinger; DEA Seizure No. 71390;
13. 2 "Woodmark Originals" chairs, DEA Seizure No. 71389;
14. 1 Minolta copy machine, Model No. EP300RE, Serial No. 1657250; DEA Seizure No. 71388;

15. 1 Multi-colored Persian rug, 13'10" x 13'10", made in Iran; DEA Seizure No. 71387;
16. 1 Wood china cabinet w/glass doors 7' x 8'; DEA Seizure No. 71386;
17. 2 Book shelves, one 4' x 3', one 4' x 2'; DEA Seizure No. 71385;
18. 1 Wood desk w/folding front, 3' x 2'; DEA Seizure No. 71384;
19. 1 Chinese wool pile rug 6' x 9'; DEA Seizure No. 71648; and
20. 1 Wood frame dining table 48" x 96" x 28 1/2"; DEA Seizure No. 71647.

VERIFICATION

I, BRIAN DEGEN, declare as follows:

I am a citizen of the country of Switzerland, and currently reside in Verbier, Switzerland.

I have read the foregoing claim and know the contents thereof, and the same is true of my own knowledge, except as to all matters therein stated upon information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this verification was executed on March 30, 1990, in Verbier, Switzerland.

/s/ Brian Degen

BRIAN DEGEN

(Affidavit of service omitted in printing)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

GOVERNMENT'S MOTION TO STRIKE
CLAIMS AND ANSWERS OF BRIAN J. DEGEN
AND KARYN DEGEN AND MOTION FOR
SUMMARY JUDGEMENT

May 2, 1990

COMES NOW the UNITED STATES OF AMERICA,
by and through the office of the United States Attorney,
RICHARD J. POCKER and SHIRLEY SMITH, Assistant
United States Attorney, and hereby moves this Court to strike
claimants BRIAN J. DEGEN and Karyn Degen's claims and
answers on the following grounds:

1. Claimant BRIAN J. DEGEN is a federal fugitive.
2. Claimant Karyn Degen is claiming derivatively
through fugitive BRIAN J. DEGEN.
3. The claims should be stricken because they do not
adequately state claimants interest in the property.

The United States additionally requests that the Court
enter a default in favor of plaintiff and grant a Summary
Judgement to the United States directing the forfeiture of all
assets sought in plaintiffs Amended Complaint *In Rem* for
forfeiture.

Plaintiff's Motion is based upon the Memorandum of
Points and Authorities filed in support of this Motion, the

Declaration of DOROTHY NASH HOLMES, Assistant
United States Attorney and Exhibits thereto.

Dated this 27 day of April, 1990.

Respectfully submitted,

RICHARD J. POCKER
United States Attorney

/s/ Shirley Smith
SHIRLEY SMITH
Assistant United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

GOVERNMENT'S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF GOVERNMENT'S
MOTION TO STRIKE CLAIMS AND ANSWERS
OF BRIAN J. AND KARYN DEGEN

May 2, 1990

STATEMENT OF FACTS
NOT GENUINELY AT ISSUE

On October 24, 1989, the Plaintiff, United States of America, filed a verified Amended Complaint for Forfeiture against the defendant property and made service upon attorney Donald Heller for claimants and real parties in interest, BRIAN J. DEGEN and Karyn Degen. On October 24, 1989, a Federal Grand Jury in the District of Nevada, returned a criminal Superseding Indictment against BRIAN J. DEGEN, charging him in Counts One through Fourteen and Counts, Sixteen, Eighteen, Nineteen, Twenty-one through Thirty-two and Forty-nine, in *United States v. Ciro Wayne Mancuso, et al.*, Criminal No. N-89-24-ECR, which is now pending.

Contemporaneously, a warrant was issued by PHYLLIS HALSEY ATKINS, United States Magistrate for the District of Nevada for the arrest of BRIAN JOHN DEGEN, also known as "B".

BRIAN DEGEN is a fugitive now living in Switzerland and has no intention of returning to the United States, according to his attorney Donald H. Heller. On July 13, 1989, a sealed Complaint for Forfeiture *In Rem* was filed by the United States against various real property proceeds and personal property. That Complaint was twice amended and finally severed on March 23, 1990 resulting in two separate cases. The original forfeiture case CV-N-89-397-ECR now amended to include only property claimed by CIRO WAYNE MANCUSO and his wife and CV-N-90-130-ECR against property claimed by BRIAN and Karyn DEGEN. On April 6, 1990, Donald H. Heller, Esq., as attorney for BRIAN DEGEN and Karyn Degen, filed separate claims for each party to the property that the Government has seized pursuant to this forfeiture complaint. Mr. Heller also filed separate answers to the Amended Complaint for Forfeiture *In Rem* on behalf of BRIAN and Karyn DEGEN.

It is these claims and answers that the Government seeks to strike for the reasons set forth in the arguments that follow. With the Claims and Answers of BRIAN and Karyn DEGEN stricken, the Court is urged to enter a Summary Judgment in favor of the Government as against the Degens. The remaining claimants are lien holders or business partners with whom the United States has agreed to settle, including Tahoma Homeowners Association, Reuben Hills and lending institutions which have not filed claims but whose claims the United States of America will recognize.

ARGUMENTS

1. CLAIMANT BRIAN J. DEGEN'S CLAIM
SHOULD BE STRICKEN BECAUSE HE IS A
FEDERAL FUGITIVE.

The claimant, BRIAN J. DEGEN, is a federal fugitive and is barred by the fugitive disentitlement doctrine from contesting this forfeiture. See certified copy of Warrant of Arrest, issued October 24, 1989, attached herein.

A fugitive from justice in a criminal proceeding is disentitled from contesting the Government's civil forfeiture claim. *United States v. \$129,374 in United States Currency*, 769 F.2d 583, 586 (9th Cir. 1985), *cert. denied*, 106 S.Ct. 83 (1986). The Fugitive Disentitlement Doctrine was first articulated in the United States Supreme Court case of *Molinaro v. New Jersey*, 396 U.S. 365. (1970).

The Ninth Circuit extended the *Molinaro* Fugitive Disentitlement Doctrine to civil cases when it considered the District of Nevada's case on appeal, *Conforte v. C.I.R.*, 692 F.2d 587 (9th Cir. 1982). The *Conforte* case on page 589 states as follows:

The Supreme Court held in *Molinaro v. New Jersey*, 396 U.S. 365, 366, 90 S.Ct. 498, 24 L.Ed.2d 586 (1970), that an individual who seeks to invoke the processes of the law while flouting them has no entitlement "to call upon the resources of the Court for determination of his claims." See *United States v. Commanding Officer*, 496 F.2d 324, 325 (1st Cir. 1974). Joseph Conforte's attempts to distinguish the application of this rule are unpersuasive. First, he argues that *Molinaro* applies only to appeals of criminal conviction. Although *Molinaro* involved an appeal from a criminal conviction, there is no indication in the Court's decision that the rule stated has any less vitality in civil cases. To the contrary, as the Service points out, and as other courts have recognized, the rule should apply with greater force in civil cases where an individual's liberty is not at stake. Cf. *Broadway v. City of Montgomery, Alabama*, 530 F.2d 657 (5th Cir. 1976) (court refused to hear an appeal from a fugitive who sought damages and injunctive relief from an allegedly illegal state wire tap); *United States v. Commanding Officer*, *supra* (court refused to hear a petition for a writ of habeas corpus seeking injunctive and declaratory relief from a specific Army regulation since the petitioner was in flight from

custody); *Doyle v. United States Department of Justice*, 494 F.Supp. 842, 845 (D.D.C. 1980), *aff'd*, 688 F.2d 1365 (D.C.Cir. 1981), *cert. denied*, 455 U.S. 1002, 102 S.Ct. 1636, 71 L.Ed.2d 80 (1982) ("If the courts may invoke their inherent equitable powers to refuse to entertain appeals from fugitives who are seeking to overturn criminal convictions, they surely may do so likewise with respect to those fugitives who merely seek relief under the Freedom of Information Act.").

As pointed out above, the court in *Conforte* reasoned that the *Molinaro* disentitlement doctrine should apply "with greater force in civil cases where an individual's liberty is not at stake." The Ninth Circuit in the case of *United States v. \$129,374 in U.S. Currency*, 769 F.2d. 583, extended the *Molinaro/Conforte* Disentitlement Doctrine to civil forfeiture cases and to claims that are derivative from the fugitive.

In #129,374 in *U.S. Currency*, the Ninth Circuit, at page 587 sets forth the following:

The issue before us in this case is one of first impression: whether the *Molinaro/Conforte* disentitlement doctrine should bar intervention in a civil forfeiture proceeding by a fugitive's successor in interest. We conclude that the limited extension of that doctrine to this situation is compelled as a matter of sound policy.

The *Molinaro/Conforte* disentitlement doctrine clearly bears on whether the conservator is entitled to pursue a claim in the forfeiture proceeding on behalf of the fugitive estate. We hold that *Conforte* would bar any defense by Lewis in the forfeiture action. *The conservator's claim is solely derivative of any claim or defense that Lewis may maintain.* If the fugitive is deprived of presenting any claim or defense in this action as the result of this fugitive status, the conservator of his estate must suffer the same consequences when he seeks to advance the same claim or defense.

Moreover, the proper time to address this issue is during the motion to intervene, which requires an examination as to whether the applicant has any cognizable, protectable claim. No useful purpose would be served by putting off discussion of this issue to the hearing on the merits of the forfeiture action itself. Rather, permitting intervention at this stage would only add unnecessary complexity to the forfeiture proceeding.

Nor does our holding result in any further prejudice to Lewis' interests. It is important to recognize that Lewis has complete control over the protection of his property interests in this forfeiture proceeding; if he finds his interests are sufficiently worth defending, he can terminate his fugitive status and present his own defense. This is not a situation in which a conservator has been appointed to represent someone who is incapable, either physically, mentally or legally (such as a minor), of adequately representing his interests. Here, Lewis is solely responsible for his plight. (Emphasis added).

As long as a claimant remains a federal fugitive, his claims should be stricken pursuant to the fugitive disentitlement doctrine.

Further, Karyn Degen's claim is derivative in nature. She states in her Answer that she is a co-owner of the defendant property "jointly with her spouse" (at pg. 6). The Government's investigation revealed that the Degen's were married February 15, 1981. (See Declaration of AUSA Holmes and Exhibits thereto). As stated in the attached Declaration, of the 14 parcels of real property (or sales proceeds thereof) claimed by Karyn Degen, all but two were separately acquired by BRIAN JOHN DEGEN *before* he married Karyn Degen. Only 3060 North Lake Boulevard and 3457 Waikomo Road were acquired after the Degens marriage. Clearly, then, Karyn Degen's claims are derivative of her husband, fugitive BRIAN JOHN DEGEN and thus,

she, too, should be barred by the Fugitive Disentitlement Doctrine.

2. CLAIMANT KARYN DEGEN'S CLAIM SHOULD ALSO BE STRICKEN ON THE BASIS THAT HER CLAIM IS DERIVED FROM THE FUGITIVE AND IN EFFECT SHE IS ALSO A FUGITIVE.

Karyn DEGEN'S claim states in part "that she is the co-owner of the defendant properties, and/or all interests in the proceeds of the sale of the defendant properties, listed in Exhibit A to this claim..." She further says in part "The claimant further avers that she was at the time of the filing of the complaint herein, and still is the true and bonafide co-owner of the defendant properties, and/or all interests in the proceeds of the sale of defendant properties, listed in Exhibit A attached hereto."

As is made clear by the affidavit of Assistant United States Attorney Dorothy Nash Holmes, all but two of the properties sought in forfeiture by the Government were acquired by BRIAN JOHN DEGEN before his marriage to Karyn on February 15, 1981. Only the Lot at 3060 North Lake Boulevard, Lake Forest, California identified as Exhibit K to the complaint *In Rem* and 3457 Waikomo, Road, Koloa, Hawaii, identified in Exhibit P to the complaint *In Rem* were purchased after the Degen's marriage and those were purchased in 1983 and 1986 respectively. Therefore, her claim as to all but those two properties should be stricken on the basis that they are the sole and separate property of BRIAN JOHN DEGEN and were acquired by him with proceeds of illegal drug transactions.

The basic rule of standing in civil forfeiture actions is that the claimant must have an ownership or possessory interest in the subject property, that is the right to exercise dominion and control over it. *United States v. One 1945 Douglas C54 (DC-4) Aircraft*, 647 F.2d. 864, 866 (8th Cir.

1981); *United States v. One Stapleton Pleasure Vessel named THREESOME*, 575 F.Supp. 473, 477 (S.D. Fla 1983).

Generally persons with only non-possessory interest in the property such as lien holders do not have standing as claimants in the judicial forfeiture proceeding and must seek relief either by filing petitions for remission or mitigation or by requesting leave to participate in the proceedings as interveners rather than claimants. *United States v. One Piece of Real Estate*, 571 F.Supp. 723, 726 (W.D. Tex. 1983); *United States v. One 1961 Cadillac Hardtop Automobile*, 207 F.Supp. 693, 698 (E.D. Tenn. 1962; See Federal Rules of Civil Procedure, Rule 24. To the extent that Karyn Degen can claim a community property interest in the Lot at 3060 North Lake Boulevard and 3457 Waikomo Road by reason of its having been acquired during the pendency of the marriage that claim will be defeated because those properties were acquired with the proceeds of illegal drug transactions.

3. BRIAN J. DEGEN'S AND KARYN DEGEN'S CLAIMS SHOULD BE STRICKEN BECAUSE THE CLAIMANTS, FAILED TO STATE WITH ADEQUATE SPECIFICITY THEIR INTEREST IN THE PROPERTY.

The pertinent part of Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims states in part as follows:

The claim shall be verified on oath or solemn affirmation and shall state the interest in the property by virtue of which the claimant demands his restitution and the right to defend the action. (Emphasis added).

In *United States v. \$15,500, supra*, the court, at page 1360-61 states as follows:

The applicable statutory sections discussing forfeiture proceedings made clear that one who contests a forfeiture must be a claimant. A "claimant" is one who claims to

own the article or merchandise or to have an interest therein. See, e.g., 19 U.S.C. §§ 1608, 1613, 1615. Thus there may be more than one claimant in a forfeiture proceeding.

In *United States v. One 1951 Cadillac Coupe de Ville*, 108 F.Supp. 286 (W.D. Pa. 1952), both the owner and chattel mortgagee claimed an interest in the seized vehicle. Although the type and extent of the interest claimed may vary (see our opinion in *United States v. One Twin Engine Beech Airplane*, 533 F.2d. 1106, 1107 (9th Cir. 1976), where we used the terms "owner or possessor" in describing a claimant) in all cases the real party in interest claims some interest in the seized article or merchandise itself. Appellant has not done so.

The Affidavit submitted in support of her claim was that of her counsel who stated that appellant had informed him that she was the owner of the currency and that he was alleging the same in reliance on those statements. C.T. 5. We view this hearsay statement of appellant's counsel as insufficient to satisfy the requirement of the forfeiture provisions that the claimant be one who claims the property or an interest therein.

CONCLUSION

For the reasons set forth above, the Government respectfully requests that the fugitive claimant BRIAN J. DEGEN and claimant Karyn Degen's claims and answers be stricken and that a Summary Judgement be entered in favor of the Government as to the DEGENS.

Respectfully submitted,

RICHARD J. POCKER
United States Attorney

/s/ Shirley Smith
SHIRLEY SMITH
Assistant United States Attorney

WARRANT FOR ARREST

United States District Court		District Nevada - Reno
UNITED STATES OF AMERICA v. BRIAN JOHN DEGEN, aka "B"		Docket No. CR-N-89-24-ECR
WARRANT ISSUED ON THE BASIS OF: <input type="checkbox"/> Order of Court <input checked="" type="checkbox"/> Indictment <input type="checkbox"/> Information <input type="checkbox"/> Complaint		
Any U.S. Marshal or other authorized officer		
YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the nearest available magistrate to answer to the charge(s) listed below.		
DESCRIPTION OF CHARGES		
Continuing Criminal Enterprise-21 USC §848, Conspiracy to Import Controlled Substances-21 USC § 963, Conspiracy to Possess with Intent to Distribute and to Distribute Controlled Substances-21 USC §846, Conspiracy to Defraud the U.S.-18 USC §871, Criminal Forfeiture-21 USC §853(a)(3), ITAR-18 USC §1952(a)(3), Aiding and Abetting-18 USC §2, Possession with Intent to Distribute-21 USC §841(a)(1), Distribution-21 USC §841(a)(1), Unlawful Use of a Communication Facility-21 USC §843(b), Obstruction of a Criminal Investigation-18 USC §1510, Tampering with a Witness-18 USC §1512(b)		
	UNITED STATES CODE TITLE SEE ABOVE	
	SIGNATURE U.S. MAGISTRATE) /s/ Phyllis Halsey Atkins	DATE 10/24/89

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

DECLARATION OF
DOROTHY NASH HOLMES

May 2, 1990

I, DOROTHY NASH HOLMES, under penalty of perjury, declare as follows:

1. That I am an attorney duly licensed to practice in the States of Nevada, California and the District of Columbia as well as before the Federal Courts in the District in the District of Nevada, Northern District of California and the Ninth Circuit Court of Appeal. Further, that I am the Assistant United States Attorney assigned to the prosecution of Brian John Degen and others in the criminal case of *United States v. Ciro Wayne Mancuso, Brian John Degen, et al.*, CR-89-N-24-ECR and the civil litigation of this case *United States v. Real Properties at Incline Village, et al.*

2. That in March, 1989, I began to work on the investigation of the Ciro Wayne Mancuso-Brian John Degen Organization. In May, 1989, the Grand Jury subpoenaed the parents of Brian Degen, Fred and Mary Degen, to appear as witnesses before the Grand Jury in that investigation.

3. Prior to issuing the subpoena for his parents, the Government has subpoenaed records pertaining to Brian John Degen from Degen's insurance carriers and accountants in

Sacramento, California, his parents place of residence which Degen has claimed as his legal residence as well. Your declarant learned from those sources that Degen's parents were informed of those Grand Jury subpoenas.

4. Prior to their Grand Jury appearance, I spoke with attorney, Donald Heller, of Sacramento, California, and I spoke with Mr. and Mrs. Degen. All of them informed me that Brian Degen was in Hawaii, and could be reached, if necessary, in this investigation.

5. That in September of 1989, Deputy United States Marshal Al Patino of Hawaii, made an investigation of the Degen residence in Hawaii for purposes of attempting to locate Brian John Degen and serve a subpoena on him. At that time, Patino discovered and advised your declarant, that Degen no longer was residing at his residence in Hawaii. Patino further advised that he had learned from neighbors and Buff Toulon, the manager of Degen's Mini Storage facility in Kauai, Hawaii, that Brian Degen and his family had left the country for Switzerland. Toulon further advised Marshal Patino that Degens' had left Hawaii approximately 1 year earlier, in about November or December, 1988. Patino learned that Degen has a residence in Verbier, Switzerland which he occupies with his wife and three children. In November, 1988, trial attorney Russell Stoddard and agents of the Drug Task Force traveled to the island of Kauai as part of the Mancuso, Degen investigation.

6. On October 24, 1989, the Grand Jury for the District of Nevada indicted Brian John Degen, along with 17 others, for participation in a 20-year long marijuana trafficking conspiracy. Degen is named as one of three organizers, managers or leaders of the Continual Criminal Enterprise.

7. Subsequent to the indictment, I telephoned Don Heller to advise him of the indictment of Brian Degen and the issuance of a warrant for his arrest. At that time, Heller informed me that Degen was indeed residing permanently in

Switzerland, claiming Swiss nationality by virtue of his father's birth in Switzerland, and had no intention of returning to the United States. Further, your declarant learned at that time that Degen had been out of country for almost one year and had not been in Hawaii at the time that his parents initially so represented to your declarant. Your declarant additionally learned that shortly after his parents' appearance before the Grand Jury, Brian Degen met with his attorney in the Cayman Islands, away from the United States, in order to discuss their approach to the investigation and indictment of Brian Degen.

8. That attorney Donald Heller obtained from me an extension of time to file BRIAN DEGEN's claim and answer that the claimant was out of the country and did not anticipate returning to the United States and Heller had to send the verification form to Switzerland for DEGEN's signature.

9. The United States has confirmed through Swiss Authorities and the Federal Narcotics Police that Brian John Degen is, indeed, occupying a residence known as "Mon Echo" chalet in Verbier, Switzerland, has hired legal counsel in Geneva, Switzerland and is aware of the criminal charges against him.

10. On October 25, 1989, Federal Agents executed a search warrant on the residence of Brian John Degen at in Hawaii and one of the items seized pursuant to that search warrant was a card from Brian Degen to his wife, Karyn, undated, stating in essence that Degen had gotten himself "in a position where I can't go back to Tahoe". (Exhibit A)

11. Further, on that same day Federal Agents executed a search warrant on the mini-storage business of Brian Degen in Koloa, Hawaii. It was discovered at that time that Degen had deposited his personal papers, records, computer and a number of other items in one of his mini-storage units under a phony name, Frank Costa, and that the residence formerly

occupied by Degen and his family had indeed been abandoned.

12. That as part of the Degen investigation the Government has obtained a certified copy of the marriage certificate of Brian and Karyn Degen (Exhibit B) showing they were married February 15, 1981 in Tahoe City, California. (A xerox of the certified copy is attached so the Government can keep the actual stamped certified copy to introduce at trial.)

13. That as part of the Degen investigation, the Government has obtained real property records in the form of escrow files, title reports and official documents from County Recorders reflecting owners of real property, dates acquired, title status, liens shown, etc... for all of the property the Government claims in forfeiture from Brian John Degen. Your declarant has examined those records for every piece of property claimed by Karyn Degen in her listing in Exhibit A to her "Claim to Property" filed approximately April 6, 1990. All but two of the properties sought in forfeiture by the Government were acquired by Brian John Degen before his marriage to Karyn on February 15, 1981. Only the lot at 3050 North Lake Blvd., Lake Forest, California (identified as Exhibit K to the Complaint *in Rem*) and 3457 Waikomo Road, Koloa, Hawaii (identified in Exhibit P to the Complaint *in Rem*) were purchased after the Degens marriage, and those were purchased in 1983 and 1986, respectively.

Date: April 30, 1990

/s/ Dorothy Nash Holmes
DOROTHY NASH HOLMES
Assistant United States Attorney
Organized Crime Drug
Enforcement Task Force

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

CLAIMANTS OPPOSITION TO MOTION TO
STRIKE AND FOR SUMMARY JUDGMENT

September 7, 1990

COME NOW Claimants Brian J. Degen and Karyn Degen by and through their attorneys, Daniel W. Stewart and C. Frederick Pinkerton and submit the following Points and Authorities:

* * *

FACTS REMAINING IN ISSUE

Claimants Brian J. Degen and Karyn Degen submit that the following facts remain in issue in this case:

1. That the property or any of it was purchased with illicit funds.
2. That the distribution from the Norris trust in 1985 to Karyn Peterson Degen was used to purchase and construct in part the Koloa Self-Storage property which the government seeks to have forfeited.
3. Whether the profits from Brian Degen's construction and investment in real estate were used to purchase the properties which the government seeks to have forfeited.

4. Whether the property at 3060 North Lake Boulevard was purchased from the profits from the sale of the tri-plex at 389 Alder Court.

5. Whether the profits from the sale of the houses at 4515 and 4520 Interlaken Road were reinvested in the purchase of other property.

6. Whether the profits from the house at 1180 Big Pine Drive, Tahoe City, California were reinvested in other property.

7. Whether the government has listed for forfeiture, properties in which none of the defendants own an interest.

8. Whether the profits from the sale of the house at 5166 Lawaii Road, Kauai, Hawaii were reinvested in the Koloa Self-Storage project at 3757 Waikomo Road, Koloa, Kauai, Hawaii.

9. Whether Brian Degen had income for the last 20 years from his business and investments which would easily explain his equity in the properties which the government seeks to take by forfeiture.

I.

UNDER THE SPECIFIC FACTS OF THIS CASE, PARTICULARLY IN LIGHT OF THE DEMONSTRABLE OVERREACHING BY THE GOVERNMENT, THIS COURT SHOULD EXERCISE ITS DISCRETION AGAINST DISENTITLEMENT AND PERMIT THE PROPERTY OWNERS TO APPEAR AND DEFEND.

The "fugitive disentitlement doctrine" is a judicial creation applied by the U. S. Supreme Court in *Molinaro v. New Jersey*, 396 U.S. 365 (1970) to bar a convicted fugitive from pursuing a statutory appeal of his conviction. The doctrine basically recognizes that a federal court has inherent power to decline to lend its resources to the determination of claims of a fugitive who, because of his status, refuses to be bound by an unfavorable judgment.

The question whether the *Molinaro* disentitlement doctrine can be extended to a civil forfeiture action has produced a substantial split among the lower courts. A number of courts have refused to extend the doctrine. See, e.g., *United States v. Pole No. 3172, Hopkinton*, 852 F.2d 636 (1st Cir. 1988); *United States v. \$83,320 in United States Currency*, 682 F.2d 573 (6th Cir. 1982) cf. *United States v. Veliotis*, 586 F.Supp. 1512 (S.D.N.Y. 1984) (criminal forfeiture). Other courts have extended the doctrine to civil forfeitures. See, e.g., *United States v. One Parcel of Real Estate, Dade County*, 868 F. 2d 1214 (11th Cir. 1989); *United States v. \$45,940 in United States Currency*, 739 F.2d 792 (2nd Cir. 1984). One panel of the Ninth Circuit extended the doctrine to disentitle a convicted felon who fled with knowledge of the pending forfeiture action. See *United States v. \$129,374 in United States Currency*, 769 F.2d 583 (9th Cir. 1985).

While these courts have not reached consistent conclusions, they appear to agree that the judicial power to disentitle is discretionary depending upon all the circumstances of the case in question. See *United States v. Noriega*, 683 F.Supp. 1373, 1374 (S.D. Fla. 1988); *United States v. Veliotis, supra*, 586 F.Supp. at 1513.

A. UNDER THE FACTS IN THIS CASE, NONE OF THE USUAL JUSTIFICATIONS FOR DISENTITLEMENT EXIST AND NONE OF THE GOALS OF THAT DOCTRINE WILL BE ADVANCED.

Claimant Brian Degen is a citizen of both the U.S. and Switzerland. He has consistently maintained close personal and family ties with Switzerland and has chosen to resume residence there. He did not leave the U.S. with knowledge of pending criminal or forfeiture action.

The amended indictment in this case was filed on October 24, 1989. The prior indictment had been filed and the

records sealed on July 13, 1989. Investigation leading to the indictment was currently conducted in May of 1989. However, public disclosure of the indictment was not until October 24, 1989.

Brian Degen has been a Swiss citizen since birth. He has lived in Switzerland for a substantial portion of each year for the past five years. Brian Degen's son, Brian Junior, is now nine years old and in the forth grade. He has attended school in the Swiss public school every year since kindergarten. In Switzerland, one must be a Swiss citizen before one's children are allowed to attend the Swiss public school.

The official languages of Switzerland are French and Italian. Brian Degen and his children all speak French fluently. Brian Degen established a residence in Switzerland more than five years ago with the thought of establishing his full time residence there. His building business in Lake Tahoe and Hawaii, however, required that he spend time both in California and Hawaii.

The primary obstacle to Mr. Degen's moving to Switzerland was resistance from his wife, Karyn Degen. Mrs. Degen, who had to have children by cesarean, preferred Doctor Huneycutt, a physician in Reno.

In the summer of 1987, Mrs. Degen became pregnant with the couple's third child. Brian Degen wanted his third child born in Switzerland. This became a source of contention between Mr. and Mrs. Degen.

In the early fall of 1987, Mr. Degen wrote to Mrs. Degen continuing to plead with her to have the baby in Switzerland. Mrs. Degen saved the card for sentimental reasons and the government found the card when agents broke into the Degen's home with a search warrant in 1989. An illegible copy of the card is attached as exhibit A to the government's motion to strike and for summary judgment. The motion quotes some words from the card out of context

to support the government's allegation that Brian Degen left the country because of knowledge of a pending prosecution.

Attached hereto is a legible transcript of the entire exhibit A to the government's motion. It speaks for itself.

Incidentally, the card apparently had its intended effect. The Degens moved to Switzerland in the early fall of 1987 and their youngest daughter Fabia was born in Verbier on April 22, 1988.

On the other hand, while quoting personal letters out of context to support its position that Brian Degen fled to avoid prosecution, the government failed to mention strong evidence that Mr. Degen's move to Switzerland was not so motivated.

One of the properties listed by the government in its complaint was sold in January of 1989, six months before the complaint was filed. The government knew this when it filed the complaint. From the government's investigation, it knew where the proceeds of that sale went. The proceeds from the sale of the triplex at 389 Alder Court in Incline Village yielded a net of \$226,558.81 out of escrow to Brian Degen. (See escrow statement Exhibit C.) If he had fled the country, he would, logically, have transferred the money to Switzerland. Instead, he paid from the escrow a \$61,991.00 balloon payment to complete the purchase of a piece of business property at 3080 North Lake Boulevard, one of the parcels which the government seeks in its forfeiture action. (See Exhibits AD and AF checks to Valley Installment and the Osbornes.) Mr. Degen deposited the remainder, a check for \$164,567.83, (see check and deposit slip, Exhibit D) to his checking account at Bank of America in Tahoe City. From that account we wrote a check for \$116,113.90 to reimburse his parents for the money they had invested in the property. He also wrote a check to Max Hoff for \$40,000.00 as a partial balloon payment for the purchase of a house and property at 6660 West Lake Blvd. in Homewood, California

which he was purchasing under a note and deed of trust. (Copies of checks not yet available.)

Brian Degen's actions in re-investing the profits from the sale of the property at 389 Alder Court in the properties at 3060 North Lake Boulevard and 6660 West Lake Boulevard are not the actions of a man fleeing the country to avoid prosecution.

The government in its motion, misrepresented a piece of evidence, the letter, and withheld pertinent evidence from this court in order to suggest that Brian Degen left the country to avoid prosecution. The evidence speaks clearly to the contrary.

Brian Degen has not been convicted of any crime. He is merely accused and thus retains the presumption of innocence. He did not institute this action, but simply seeks to appear to defend against the government's confiscation action. He is not asserting mere statutory remedies but seeks to preserve his basic constitutional rights to own and enjoy property. Since the property in questions here has been seized, claimant inevitably will be bound by judgment of this court. He cannot "opt out" of an unfavorable forfeiture judgment. Finally, in light of the burden of proof on the claimant in a forfeiture action, the government can demonstrate no prejudice if claimant is permitted to appear to defend through counsel. Any potential, speculative discovery problems should be addressed if they arise, not by a wholesale disentitlement.

Under these facts none of the justifications for disentitlement exist in this case. Claimant Brian Degen can be permitted to appear without compromising the integrity of this court or its judgement.

B. THE FINAL AND DECISIVE FACTOR AGAINST DISENTITLEMENT IN THIS CASE IS THE DEMONSTRABLE AND INEQUITABLE OVERREACHING BY THE GOVERNMENT IN ITS FORFEITURE ACTION.

Although rarely analyzed in the cases, forfeiture is ultimately an equitable doctrine. "One who seeks to enforce a forfeiture must himself be free from blame." *Fey v. A. A. Oil Corp.*, 285 P.2d 578, 586 (Mont. 1955) (contractual forfeiture); *Storm v. Barbara Oil Co.*, 282 P.2d 417, 424 (Kan. 1955). "The maxim that he who seeks equity must do equity is applicable here." *Hingecc "fig. Co., v. Haglund*, 14 A-2d 233, 235 (R. I. 1940). Forfeitures are clearly not favored and are to be enforced only when within both the spirit and letter of the law. *United States v. One 1957 Rockwell Aero Commander*, 671 F.2d 414, 417 (10th Cir. 1982).

The disentitlement doctrine, when used to wholly preclude defense to a forfeiture action, necessarily invokes the same equitable principles. The forfeiture statutes by their nature are inherently susceptible to potential governmental abuse. When there is any suggestion of governmental overreaching, appearance and defense by a property owner is essential for the court to obtain all the facts and to assure that the process is not misused. Utilizing the disentitlement doctrine in such a case to preclude any defense greatly magnifies the opportunity for injustice when the government recklessly claims property that is patently not subject to forfeiture or otherwise abuses the forfeiture process, it stands before the court with unclean hands and disentitlement of an opposing party become wholly inequitable.

The element of potential governmental overreaching has been an important factor in several of the cases refusing to disentitle claimants in forfeiture actions. The case of *United States v. Veliotis, supra*, involved criminal forfeiture under the RICO statutes. Among the reasons for declining to

disentitle, the court emphasized the widespread "concern about misuse of the RICO statute by overzealous prosecutors.":

The potential for abuse in such circumstances is troubling. The RICO statute and the limits of its application have presented the courts with complex and important legal questions and, independent of any duty toward or sympathy for Mr. Veliotis, the Court has a responsibility to proceed cautiously in this area. I do not believe this obligation should be suspended, at the behest of the Government, simply because the defendant is not present.

Id. at 1516. The court continued by quoting Justice Murphy's dissenting opinion in *Eisler v. United States*, 338 U. S. 189, 194-195 (1949):

[I]t is the importance of the legal issues, not the parties, which bring the case to this Court. Those issues did not leave when [the defendant] did. They remain here for decision; they are of the utmost importance to the profession and to the public.

The law is at its loftiest when it examines claimed injustice even at the instance of one to whom the public is bitterly hostile... Our country takes pride in requiring of its institutions the examination and correction of alleged injustice whenever it occurs.

In *United States v. Pole No. 3172, Hopkinton, supra*, among the reasons for denying disentanglement the court mentioned that the property in question was purchased eight years before the indictment, hinting that the government might be overreaching and thus the claimant ought to be heard.

In the case of Brian Degen's property, there are substantial facts that the government recklessly ignored evidence and blindly designated properties without any regard

to readily available information that it was legitimately acquired by Mr. Degen through the resources of his family or his long-established construction business.

First, the government has chosen to ignore that Brian Degen, for almost 20 years has been in the business of buying property, constructing buildings on the property and either renting or selling the buildings. Instead, the government has made the tacit assumption that Brian Degen has produced no legitimate income and that none of the property he has purchased has appreciated in value in almost 20 years.

Brian Degen has been engaged in both residential and commercial construction in both the Lake Tahoe area and on Koloa in Hawaii. There is little doubt that his construction ventures and real estate investments have been profitable.

By use of the artifice of alleging a continuing conspiracy going back to when Brian Degen was in college, the government now questions the legitimacy of purchases and sales of property, some extending back in time more than 15 years. Now the government seeks to proceed by summary motion before the claimants have the time to obtain the evidence to bring the true facts to light.

The government has ignored the interest of third parties of which it has actual knowledge. It is proceeding as if the sole purpose of the forfeiture statute was to swell the government coffers at the expense of the weak and helpless.

The first act of the government in this case was to take possession of all of Mr. Degen's records. The records at his residence at 6668 West Lake Boulevard have disappeared. The U. S. Marshall's office took possession of the records at the Koloa Self-Storage units in Koloa Hawaii. Those records have not been made available.

In short, the government has not allowed the evidence to see the light of day and prefers to proceed with its forfeiture action while retaining most of Mr. Degen's business records.

However, notwithstanding that the government has confiscated the Degen's business records both from Homewood and Koloa, it is still possible to show, to a substantial degree, that there is reason to believe that the assets sought to be forfeited were not purchased with funds from alleged marijuana smuggling.

It is Brian Degen's claim that he was able to establish himself in the contracting and real estate investment business with the help of his parents Fred and Violet Degen. His parents own a building construction business in Sacramento and have been involved in real estate investment and building construction for many years.

Some evidence of this may be found in the real property records for the properties which the government seeks to have forfeited. Exhibit B hereto is the deed by which Brian Degen and Mrs. Fred Degen jointly purchased the property upon which Brian Degen constructed the tri-plex at 389 Alder Court in Incline Village, Nevada. The property was purchased on August 3, 1979 as can be seen from the face of Exhibit B.

By building a tri-plex on the property, Brian Degen undoubtedly increased the value of the property which was sold on January 20, 1989, for \$245,000.00 as shown by the escrow statement attached as Exhibit C. The net proceeds of the escrow was \$226,558.81, a total of a check to Brian Degen of \$164,567.83 and a transfer of \$61,991.98 to escrow number 17941-cj. The funds were then used to purchase the property at 3060 North Lake Boulevard in Lake Forest, California. The government seeks forfeiture of this property also.

Brian Degen deposited the check from Founders Title Company of Nevada for \$164,567.83 into his bank account at the Bank of America in Tahoe City, California. A true copy of the check dated January 19, 1989 and the deposit slip dated January 20, 1989 are attached hereto as Exhibit D.

From Brian Degen' [sic] checking account at the Tahoe City Branch of Bank of America, he wrote a check to his mother, Mrs. Fred Degen, whose name was also on the deed to the property that was sold, in the amount of \$116,113.90 to reimburse his parents for the money they had lent him for the purchase and construction of the building. He also wrote a check for \$40,000.00 to Max Hoff as a partial purchase price of a lot and house in Tahoma (Homewood) California. Copies of the checks have not yet been obtained from Bank of America.

The government has presented no evidence that it has traced any illegal money whatsoever into the purchase and construction of the tri-plex at 389 Alder Court in Incline Village but blandly asks this court to order forfeiture of the profits from the construction and 10 year investment.

In 1973, Brian Degen parents, Fred and Violet Degen, purchased as house in Zephyr Cove, Nevada. The down payment came from the sale of another house which Mrs. Degen owned in South Lake Tahoe. Intending to improve their son's financial statement, the Degens added him to the deed and the deed of trust for the property. (A true copy of which is attached as Exhibit E.) Brian Degen made no contribution to the purchase price of the property.

Brian Degen lived in the house for a period of time and then moved out. The house was rented and Brian Degen managed the property for his parents until November 1, 1985 when it was sold to Dr. Hardock, a dentist from Sacramento. The escrow instructions shows the purchase price paid by Dr. Murdock in 1985. (A copy of which is attached hereto as Exhibit F.) Dr. Murdock financed some of the purchase price with a lender secured by a first deed of trust and the Degens took a note for \$34,500.00 secured by a second and a deed of trust. (A true copy of the promissory note is attached hereto as Exhibit G.) Exhibit H evidences the Degens' request for notice pursuant to NRS 107.090 which, it may be noted, was sent to Pacific Builders, Brian Degen's parents' business, in

Sacramento, California. Payments on the note have always been made to Brian Degen's parents, not to him.

The distribution from the escrow of the balance of \$79,239.13 was made, initially, half to Brian Degen and half to Mr. and Mrs. Degen. Brian Degen used his share in the purchase of the land at 5166 Lawaii Road in Kauai, Hawaii and the construction of a house which was later sold. When Brian ran short of funds, Mrs. Violet Degen sent him her share as well of the \$79,239.13 distribution from the escrow (See exhibit F.)

There is no evidence that any marijuana smuggling funds found their way into the purchase of the house by Brian's parents at 623 Alma Way in Zephyr Cove. Yet the government seeks an order of this court to forfeit the profits from Brian Degen's parents' 13 years investment in the property.

On January 4, 1979 escrow closed on the sale of a house Brian Degen had constructed on a parcel of property he had purchased. Are [sic] the escrow instructions show that the house was sold to Mr. and Mrs. Vokel for \$110,000.00. (Exhibit I) A balance of \$94,225.16 was paid to Brian Degen on January 4, 1979. It is not known how much of that was profit as Brian Degen's records are not available.

It is submitted, however, that there is no evidence to show that marijuana smuggling profits were used in the purchase of the land or the construction of the house at 1180 Big Pine in Tahoe City. The government action for forfeiture lacks any fact to support it.

Exhibit J attached hereto is a grant deed dated October 12, 1977 from Fred Degen and Mary Degen, his wife and Brian Degen a single man to John H. Walker and Linda H. Walker, husband and wife. This is the sale of a house which was constructed by Brian Degen with the financial backing of his parents. The escrow statement is apparently unavailable

so that the sale price and the amount distributed to Brian Degen probably cannot be determined.

Again, there is no basis in fact for the government's claim that the profits from the house at 1515 Interlaken Road (the deed for which is Exhibit J) was financed by drug profits. Apparently it was financed by his parents, Fred Degen and Mary Degen. There is no evidence to the contrary and no basis for forfeiture.

The property at 4520 Interlaken Road was sold to Mr. and Mrs. Palmieri on or about November 2, 1978. A true copy of the deed is attached as Exhibit K. Apparently this is one of a number of sales of houses Brian Degen had constructed for sale.

Nothing produced by the government thus far shows that any profits from alleged smuggling operations were used to purchase the land or construct the house at 4520 Interlaken Road. This being the case, there is no basis for an order that the profits from the construction and sale of the house be forfeited.

On October 10, 1979, Brian Degen purchased an undivided 1/2 interest in 3 parcels of property together with Mr. and Mrs. Ciro Mancuso. Mr. Mancuso, also in the construction business, suggested that the parties go in together to purchase the 3 lots at 136 Lakeside and at 223 and 224 San Suici Heights because the purchase price of \$60,232.50 was, potentially, a bargain. The seller, Mr. Helm, was motivated by sickness in the family to leave the area and the property was not currently developable due to restriction by the TRPA. The prospects of a bargain have disappeared since the TRPA refused to allow development of the property. Brian Degen and Ciro Mancuso each paid \$15,000.00 towards the purchase of the property as shown on Exhibit L, the escrow instructions, and financed the balance of \$30,000.00 by a promissory note, Exhibit M.

It is submitted that there is no evidence tracing any alleged drug funds to the \$15,000.00 part of the down payment paid by Brian Degen or to any of the payments made on the promissory note. The 50% interest of Brian Degen was apparently paid for with profits from his construction business and there is no basis to support the government's claim to forfeit the property.

On August 3, 1978, Brian Degen and Ruben Hills, a contractor and real estate broker, each put up \$13,500.00 to purchase a building lot in Incline Village. The escrow instructions for the purchase are attached as Exhibit N. Thereafter, Brian Degen and Ruben Hills each contributed \$4,200.00 [sic] to build a duplex on the property for a total construction cost of approximately \$82,000.00. The grant bargain and sale deed for the purchase of the property is attached as Exhibit O.

Mr. Hills, the 50% owner of the property is certainly an innocent party. Likewise, the construction and sale of houses by Brian Degen more than accounts for the money necessary to purchase and construct the duplex at 1059 Tomahawk in Incline Village. The government has no documentation tracing alleged illegal funds into the property at 1059 Tomahawk. The government's claim is groundless.

Government overreaching is apparent also with regard to the handling of the 3 properties at 6668, 6664 and 6660 West Lake Boulevard in Tahoma (Homewood) California. It is submitted that the government has inflated the value as well as the equity and the interest of Brian Degen in the 3 properties. This may be explained with the use of a map of the properties, a copy of which is attached as Exhibit P.

The 3 properties shown on Exhibit P are the 3 houses at 6668, 6664 and 6660 West Lake Boulevard. All 3 properties were purchased from Max Hoff, a developer and real estate broker in the area. Max Hoff was the general partner of the limited partnership which developed the Tahoma Meadows

development. As part of the development, the homeowners of Tahoma Meadows, it was anticipated, would have access from their homes, which were across the road from the lake, to the lake. It was anticipated that the properties which are now lots 6668, 6664 and 6660 would be common area for the benefit of the homeowners.

Apparently as a result of conflicts with the Tahoe Regional Planning Agency in the proposed development of the 3 lots, the general partner decided instead to construct a house for sale on the lot which is 6668 West Lake Boulevard. At that time, Mr. Hoff occupied a house on the lot which is 6660 West Lake Boulevard. There was nothing constructed on the lot at 6664.

Apparently at some point in time, an agreement was made between Max Hoff and his wife, Unis Hoff that the property owners association would have the right to use a 20 foot path across the property to the lake. Additionally, there was to be a parking area, a swimming pool, and a bath house to be maintained on the portion of the property closest to the highway. Additionally, it is now claimed, the homeowners were to have the right to place buoys in the lake, construct a pier and engage in other activities necessary or proper to the use of the property by the homeowners association. A map which is Exhibit A to the agreement is attached as Exhibit Q.

Mr. Hoff substantially constructed a house which he intended to sell on lot 6668 when he ran afoul of the TRPA. James Phelps, a friend of Brian Degen took advantage of this situation and contracted to purchase the house and lot on 6668 from Tom N. Tibbs, a partner in the property with Max Hoff.

James Phelps had a preliminary title report done on October 16, 1974, a copy of which is Exhibit R. He was unable to come up with the entire \$68,000.00 purchase price for the property, Violet Degen, Brian's mother, agreed to lend him the balance, approximately \$40,000.00.

As security for her loan, Violet Degen was put on the deed as the owner of the property. Attached as Exhibit S is a copy of the grant deed showing Violet Degen as the owner of the property but listing the address for Mr. Phelps, 1107 East Third Street, Centralia, Illinois. The deed is dated October 23, 1974.

The house on the property was completed essentially with the materials that were on the property. Mr. Phelps left for Illinois and Brian Degen agreed to pay him for his interest in the property. In 1979, Brian Degen refinanced the property for \$50,000.00 to pay off the purchase price. At that time, his name was placed on the property together with that of his mother, Violet Degen.

Max Hoff's health began to fail and he ran into financial trouble. He offered to sell the adjacent parcel, 6664 to Fred and Violet Degen. They purchased the property by the grant deed dated February 7, 1977 which is Exhibit T for a price of \$20,000.00.

Subsequently, Brian Degen build a garage with a small apartment, 600 square feet, above it. The apartment was constructed over a number of years from left-over building materials from other projects.

Max Hoff's health and financial condition did not improve. He developed bone cancer and was forced to leave the Lake Tahoe area. He agreed to sell his house (subject to whatever contract he had with the homeowners association) to Brian Degen for \$113,000.00. The escrow instruction on the sale dated April 10, 1980 are attached hereto as Exhibit U. This is confirmed in the declaration of documentary transfer tax which is Exhibit V and the promissory note which is Exhibit W. The promissory note is interest only for 10 years and has a balloon payment of the entire balance due August 1, 1990. Mr. Hoff has agreed not to demand the balloon payment to give Brian Degen an opportunity to defend this case. As noted previously, a \$40,000.00 payment

from the sale of the tri-plex at 389 Alder Court was applied to the principal balance reducing it to approximately \$63,000.00.

The government appraisals ignore the unique aspects of the 3 parcels which are 6668, 6664 and 6660 West Lake Boulevard. It is suggested that the appraisals do not take into account the alleged easement for a swimming pool, bath house and recreational facilities for the entire homeowners association. The rights of the homeowners association to the swimming pool, parking, bath house, pier, buoys and other amenities is the subject of litigation now pending in the superior court in Placer County.

Unique circumstances allowed Brian Degen (and his parents) to purchase the property at what still appears to be a bargain price.

Over the years, Brian Degen used excess materials from other construction projects to expand and improve the house on 6668 and 6664 West Lake Boulevard.

The 3 houses (2 houses and an apartment) were acquired and built over a number of years with the financial participation of Brian Degen's parents. There is no evidence tracing drug funds into the purchase of any of the properties or the construction of any of the buildings. There is no basis for the governments claim of forfeiture.

Exhibit X is the escrow instructions for the purchase of the property at 3080 North Lake Boulevard, Lake Forest, California which the government seeks to have forfeited. Brian Degen purchased the property on July 1, 1980. He borrowed the money for the down payment from his mother and made payments on the first and second deeds of trust to purchase the property. The payments on the first deed of trust, together with some of the check numbers used to make the payments are set forth on Exhibit Y.

Brian Degen constructed an office building on the property which was immediately occupied by tenants and produced an income of approximately \$3,600.00 per month.

Exhibit Z is the grant deed by which Brian Degen purchased the property at 3060 North Lake Boulevard. The escrow instruction (Exhibit AA) shows the purchase price of \$80,000.00 paid by a \$20,000.00 down payment and a first deed of trust of \$60,000.00 from Brian Degen to Dr. and Mrs. Osborne, the sellers. Violet Degen advanced the \$20,000.00 for the down payment and Brian Degen made the payments on the promissory note (Exhibit AB). Payments were interest only at 10% interest until January 19, 1989 as shown by the records of Valley Installment Collections, Inc. attached as Exhibit AC. The balance of the loan was paid, as previously mentioned, from the escrow from the sale of the tri-plex at 389 Alder Court (Exhibit D). The check from Founders Title to Valley Installment collection listing escrow 18297-cj is attached as Exhibit AD and the check from Valley Installment to the Osbornes is Exhibit AE.

The purchase price of the property came from the sale of the tri-plex at 389 Alder Court, not from alleged marijuana smuggling profits. There is no evidence tracing any such funds into the property at 3060 North Lake Boulevard.

Exhibit AF is the escrow statement for the sale of a house constructed by Brian Degen on Koloa in the Hawaiian Island. The escrow instructions show a balance of \$115,339.70 disbursed to Brian Degen together with payoff of loans of \$147,498.88 and \$50,493.84. Documents AG and AH are statements from First Hawaiian Bank and First Hawaiian Credit Corp for money advanced which was subsequently paid in the escrow.

The loans paid off from the escrow more than cover a reasonable construction cost. There is no reason to believe that the house at 5166 Lawaii Road in Kauai, the escrow statement for which is Exhibit AF, was constructed with

funds from illicit smuggling operations. There is no basis for the claim of forfeiture of the profits from the construction.

Exhibit AI is the escrow statement for the purchase of the property at 3757 Waikoma Road on which the Koloa Self-Storage project was constructed. Exhibit AI shows down payments totaling approximately \$67,000.00 and the balance financed on a purchase money mortgage of \$198,200.00.

The money to purchase and construct the Koloa Self-Storage came from the profits of the sale of the house at 5166 Lawaii Road, loans from Brian Degen's parents and an investment by Brian Degen's wife, Karyn Degen.

Karyn Degen's grandfather, James M. Norris, established a trust for her, her sister and brother and her mother with Security Pacific Bank in Pasadena California. As noted in the letter from Security Pacific Bank to counsel for Brian Degen, the trust distributed \$117,095.29 in principal and \$2,852.90 in income to Karyn Degen on May 1, 1985. (Exhibit AJ).

Karyn Degen deposited the distribution from her grandfather's trust into the Crocker National Bank in Tahoe City. Crocker National Bank was thereafter acquired by Wells Fargo. Exhibit AK is a wire transfer from Wells Fargo Bank from Karyn Peterson, Karyn Degen's maiden name, to the First Hawaiian Bank in Koloa in the sum of \$77,210.00 dated July 17, 1987.

The statement of account for Karyn Peterson with Crocker Bank shows balances in excess of \$137,000.00 and charges for transactions with the money market division of the bank were Crocker Bank is, apparently, investing a substantial portion of the account balance for a higher return.

It is quite apparent that approximately \$137,000.00 of the investment in the Koloa Self-Storage at 3757 Waikomo Road in Koloa, Kauai, Hawaii is traceable to the distribution to Karyn Degen from the trust set up for her by her grandfather

in 1965. The balance of the funds were advanced by Brian Degen's mother which she had received from the profits of the sale of 5166 Lawaii Road in Kauai and the house at 623 Alma Way in Zephyr Cove.

The government has not traced any illicit funds into the purchase of the property or the construction of the mini warehouse project at 3757 Waikomo Road on Koloa. There is no basis for the governments claim of forfeiture.

The government ignored that 100% of the purchase price that remained due and owing at 6660 West Lake Boulevard and did not disclose that the property at 6668 West Lake Boulevard showed Brian's mother as a co-owner on the property. No mention is made in the complaint of Ruben Hills, the co-owner of the property at 1059 Tomahawk. No mention is made of the fact that the deed from Max Hoff on lot 6664 on West Lake Boulevard was to Fred and Violet Degen, Brian's mother and father. The government's complaint does not disclose that Karyn Degen received a distribution from a trust in 1985 of approximately \$120,000.00 and that there was a wire transfer from her account to the account in Kauai around the time that the Koloa Self-Storage at 3757 Waikomo Road was being purchased and constructed. No mention was made that Brian Degen's parents names appeared on the deeds for 1180 Big Pine Drive and 1515 Interlaken Road when the government sought an order forfeiting the profits from the sale of these properties. No disclosure was made that Ruben Hills, a third party, owned 50% of the duplex at 1059 Tomahawk in Incline Village when the government sought to have the property forfeited. And, last, the government did not disclose that Brian Degen's parents were listed on the deed for 389 Alder Court and that the proceeds which the government sought to have forfeited could be traced to reimbursement of the cost of construction and purchase of 2 other properties sought to be forfeited: namely, 3060 North Lake Boulevard in Lake Forest and 6660 West Lake Boulevard in Homewood.

By counting the property and its proceeds on sale, and ignoring co-owners and lien holders, the government greatly inflates the property attributable to Brian Degen.

For these reasons, the forfeiture action now before this court presents significant questions of overreaching and potential abuse of procedure by the government. Because of the distorted foundation of the case, there is a necessity for this court to obtain all the facts to assure a just decision. Since claimant did not commence this action and will be bound by the judgment, disentitlement will serve no purpose under these facts and could perpetrate substantial injustice. This court should exercise its discretion to allow claimant to appear. The motion to strike and motion for summary judgment should be denied.

II. APPLICATION OF THE DISENTITLEMENT DOCTRINE IN FORFEITURE ACTIONS UNLAWFULLY DEPRIVES CLAIMANTS OF THE FUNDAMENTAL CONSTITUTIONAL RIGHTS TO PROPERTY AND TO HAVE ACCESS TO THE COURTS TO PROTECT THAT PROPERTY.

In *Molinaro v. New Jersey*, *supra*, the United State [sic] Supreme Court used disentitlement to deny a fugitive affirmative access to the courts for a statutory appeal of his criminal conviction. The lower courts extending *Molinaro* to civil forfeiture to deny defensive access to the courts to protect property rights have given remarkable little consideration to the fundamental constitutional consequences of their action. The U. S. Supreme Court has not directly decided the question, but its prior decisions cast substantial doubt on the constitutional validity of the disentitlement doctrine in the context of civil forfeitures.

A. FORFEITURE MUST BE EFFECTUATED IN CONFORMANCE WITH THE CONSTITUTION AND ITS DUE PROCESS CLAUSE.

Although civil in nature, forfeiture proceedings are not [sic] be effectuated in derogation of one's constitutional rights. *United States v. \$3,799.00 in U. S. Currency*, 684 F.2d 674, 677 (10th Cir. 1982). As stated in *Truax v. Corrigan*, 257 U. S. 312, 332 (1921):

The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.

Before a person is deprived of a significant property interest, the Constitution requires an opportunity granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case. *Chittester v. LC-DC-F Employees*, 384 F.Supp. 475, 479 (W.D.Pa. 1974); Annot., 76 L.Ed.2d 852 (1985). The failure to provide opportunity for a hearing either before or after seizure of private property violates due process requirements. *Holliday v. Roberts*, 425 F.Supp. 61, 65 (N.D. Miss. 1977).

[T]here can be no forfeiture of property without notice to the owner and a hearing at which he can be heard, except in a few cases of necessity...

... Neither the Legislature nor the courts can dispense with the constitutional requirement of a notice and hearing....

The rule is well settled that to constitute due process of law in regard to the taking of property the statute should give the parties interested some adequate remedy

for the vindication of their rights...; and while it is a proper exercise of legislative power to provide for the destruction of property without notice when the public welfare demands summary action — instances of this kind being the power to destroy diseased meat or decayed fruit, to kill diseased cattle, or to destroy property kept in violation of law which is incapable of lawful use... — nevertheless, where the property involved is what is sometimes termed innocent property, threatening no danger to public welfare, the owner must be afforded a fair opportunity to be heard...

People v. Broad, 12 P.2d 941, 943-944 (Cal. 1932), cert. denied, 287 U.S. 661 (1932).

The U. S. Supreme Court has held that these due process guaranties do not depend upon the vagaries of classification of a particular proceeding as "in rem" or "quasi in rem". *Robinson v. Hanrahan*, 409 U. S. 38, 39 (1972). Other courts have noted the particular sensitivity of these requirements in forfeiture actions.

In this case to deny the legal owner the right to appear and defend against the asserted forfeiture was to deny him due process of law. Any other construction would be to destroy the element of fairness implicit in our American system of justice. For justice is always the controlling consideration under our law. And in no field of that law is due process more essential than in this present-day legislative resurrection of the deodand.

People v. One 1950 Mercury Sedan, 254 P.2d 666, 668 (Cal. App. 1953) (reversing the striking of an untimely answer to forfeiture complaint).

B. THE STRICT ADHERENCE TO DUE PROCESS REQUIREMENTS IN SUCH CIRCUMSTANCES REFLECTS THE INTERPLAY OF TWO FUNDAMENTAL CONSTITUTIONAL RIGHTS.

The consistent judicial sensitivity to due process guaranties in forfeiture-type proceedings is primarily a recognition of the fundamental constitutional right to own and enjoy property without unlawful deprivation. As stated in *Lynch v. Household Finance Corporation*, 405 U.S. 538, 552 (1972).

Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right ... That rights in property are basic civil rights has long been recognized.

A recurring theme in judicial reflection has been how fundamental this right to property is under our legal system. "It is a principle of universal law that wherever the right to own property is recognized in a free government, practically all other rights become worthless if the government possesses an uncontrollable power over the property of the citizen." *House v. Los Angeles County Flood Control District*, 153 P.2d 950, 953 (Cal. 1944).

Coupled with the constitutional sanctity of private property is the right of access to the courts to protect that property. "The right to access to the courts... is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional right." *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974). See *Bounds v. Smith*, 430 U.S. 817, 821 (1977) ("It is now established beyond doubt that prisoners have a constitutional right to access the courts").

It is elementary and fundamental that every individual is entitled to his day in court in which to assert his own rights and to defend against their infringement.

Heaton v. Southern Railway Co., 118 F.Supp. 658, 661 (W.D.S.C. 1954). "Free access to the courts is an invaluable aspect of our system of jurisprudence." *Miller v. R.K.A. Management Corporation* 160 Cal. Rptr. 164, 169 (Cal. App. 1979).

Few liberties in America have been more zealously guarded than the right to protect one's property in a court of law. This nation has long realized that none of our freedoms would be secure if any person could be deprived of his possessions without an opportunity to defend them "at a meaningful time and in a meaningful manner." In a variety of contexts, the right of access to the courts has been reaffirmed and strengthened throughout our 200 year history.

Payne v. Superior Court, 553 P.2d 565, 568 (Cal. 1976) (right of indigent prisoner to defend civil action).

This court recognized this fundamental constitutional principle in *O'Conner v. Mowbray*, 504 F.Supp. 139, 141 (D.Nev. 1980):

Effective access to the courts is a constitutional right. ... "Access to the courts" encompasses all the means required for a litigant to get a fair hearing from the judiciary on the charges brought against him or grievances alleged by him.

In a variety of closely analogous circumstances, the U.S. Supreme Court has emphasized that "there are constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action [or preclude a defense] without affording a party the opportunity for a hearing on the merits of his cause [or defense]." *Societe Internationale v. Rogers*, 357 U.S. 197, 209 (1958).

1. ALIEN ENEMIES.

Even when a litigant in our courts has been a citizen of a nation at war with the United States, our courts have recognized their duty to provide due process. Although alien enemies have occasionally been precluded from prosecuting a right of action, they have not been prevented from defending actions against them or their property. *see* Annot., 137 A.L.R. 1335 (1942). "This liability of an alien enemy to be sued carries with it the right to be heard in defense, to use all the means and appliances of defense, and to appear by an attorney and present his defense." Annot., 137 A.L.R. 1361, 1363 (1942).

He is entitled to appear by attorney and will be heard in his defense. "It would be revolting to the rules of justice which govern a court to drag therein a party, and then say to him, Although you are a alien enemy, and shall not be heard, yet judgment shall be rendered against you."

Annot., 3 A.L.R. 327, 333 (1919) (quoting *Russ v. Mitchell*, 11 Fla. 80 (1864)).

These principles controlled in *The Kaiser Wilhelm II*, 246 F. 78 (3rd Cir. 1917), where the American court agreed to protect a German citizen's rights in a war-time admiralty action brought by a British Corporation. Among the reasons relied upon was "the innate sense of fairness, decency, and justice, which respects the rights of an enemy." The court felt compelled to scrupulously honor "those international and equitable rights which no fair-minded people deny even to their enemies in times of war." *Id.* at 790. In *Societe Internationale v. Rogers*, *supra*, 357 U. S. at 211, the U.S. Supreme Court emphasized that under its prior decisions the summary power to seize property under the Trading with the Enemy Act was rescued from constitutional invalidity under the due process and just compensation clauses only by the

provisions of the Act affording anon-enemy claimant a later judicial hearing on the property of the seizure.

The U. S. Supreme Court effectively rejected the dis-entitlement doctrine in forfeiture cases in two related decisions arising out of the Confiscation Act enacted during the Civil War. In *McVeigh v. United States*, 78 U.S. (11 Wall.) 259, 20 L.Ed. 80 (1870), the government filed a libel of information for the forfeiture of real property under the Confiscation Act. The owner of the property appeared by counsel and interposed a claim to the property and filed an answer. Upon the government's motion, the trial court struck the appearance, claim and answer for the reason that the claimant was a resident of Virginia within the Confederacy then in rebellion against the United States. A unanimous Supreme Court employed the strongest language in reversing:

In our judgment the district court committed a serious error in ordering the claim and answer of the respondent to be stricken from the file... The order, in effect, denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no *locus standi* in that forum. If assailed there, he could defend there. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principle of the social compact, and of the right administration of justice.

20 L.Ed. at 81.

In *Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914 (1876), the same Virginia resident successfully defended an ejectment action in state court brought by a plaintiff relying upon a wartime condemnation judgment involving other property. A judgment of default had been entered after striking the owner's appearance and answer. In agreeing with the lower court that the judgment was invalid, Mr. Justice

Field for the majority of the Court repeated the language used in *McVeigh v. United States*, *supra*, and added:

The principle stated in this terse language lies at the foundation of all well ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

The Court insightfully observed that the basic requirement of notice prior to exercise of a court's jurisdiction "is only for the purpose of affording the party an opportunity to be heard upon the claim." The Court thus reasoned that "[t]he denial to a party in such a case, of the right to appear, is in legal effect the recall of the citation to him."

A denial to a party, of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceeding had better be omitted altogether. It would be like saying to a party; appear and you shall be heard; and when he has appeared, saying: your appearance shall not be recognized, and you shall not be heard. In the present case, the district court not only in effect said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. It is difficult to speak of a decree thus rendered with moderation; it was, in fact, a mere arbitrary edict, clothed in the form of a judicial sentence.

The Court agreed that such a decree was "a mere mockery" and "in no just sense judicial proceedings." 23 L.Ed. at 916-917.

2. PARTIES IN CONTEMPT OF COURT.

Other instances where courts have unconstitutionally deprived parties of their day in court involved contempt sanctions. In *Hovey v. Elliott*, 167 U. S. 409 (1897), a defendant was held in contempt of court for failing to deposit a certain fund into court. As a sanction for the contempt, the lower court ordered his answer stricken and a default entered against him. In reversing, the U.S. Supreme Court quoted *Windsor v. McVeigh*, *supra*, and emphasized in the strongest possible terms the constitutional restrictions on the courts:

Can it be doubted that due process of law signifies a right to be heard in one's defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department — the source and fountain of justice itself — has yet the authority to render lawful that which if done under express legislative sanction, would be violative of the constitution. If such power obtains, then the judicial department of the government, sitting to uphold and enforce the constitution, is the only one possessing a power to disregard it. If such authority exists, then, in consequence of their establishment, to compel obedience to law, and to enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent.

Id. at 417-418.

An exception to *Hovey v. Elliott*, *supra*, was recognized in *Hammond Packing Co. v. Arkansas*, 212 U.S. 322 (1908), where the Court permitted striking of a defense when violation of an order to produce evidence justified a presumption of that a defense is untruthful and lacks merit.

The question constitutionally presented in a particular case thus becomes whether the striking of a defense illustrates an attempt to exercise the punitive power struck down in *Hovey*, or whether it involves an exercise of a court's power under *Hammond Packing* to presume a lack of merit in a defense from a failure to produce evidence. See *Securities and Exchange Commission v. Seaboard Corporation*, 666 F.2d 414, 417 (9th Cir. 1982); *Duell v. Duell*, 178 F.2d 683, 687 (D.C. Cir. 1949).

CONCLUSION

On a constitutional basis, the fundamental deficiencies in applying the *Molinaro* disentitlement doctrine to a forfeiture action were directly recognized by the United States Supreme Court in *McVeigh v. United States* and *Windsor v. McVeigh*. It is inconceivable that the most basic constitutional guaranties of due process extended in forfeiture-type actions to alien enemies of the nation are unavailable to an absent citizen merely accused of crime. To the degree a fugitive is in "contempt" of court for failing to submit to a separate criminal proceeding, the striking of his answer in forfeiture is clearly a punitive sanction prohibited under *Hovey*, having nothing to do with the possible merits of his defense.

The consistent and emphatic holdings of the U. S. Supreme Court demonstrate that the constitutional rights compromised by disentitlement are simply too fundamental to be constitutionally withheld from a fugitive in a forfeiture action. When ultimately required to decide the precise question, the U. S. Supreme Court cannot remain consistent and uphold the application of the disentitlement doctrine to civil forfeiture.

In light of the particular facts of this case and the suggested governmental overreaching, disentitlement would further no goals of the doctrine and would promote potential injustice. Thus, this court should decline, within its discretion, to apply the disentitlement doctrine to this case.

In the alternative, because of the unambiguous language of the Supreme Court in analogous situations, this court must declare that application of the disentitlement doctrine would be unconstitutional and would produce a void judgement.

For all of these reasons, the motion to strike and the motion for summary judgment should be denied.

Dated the 7 day of September, 1990.

/s/ Daniel W. Stewart

Daniel W. Stewart

/s/ C. Frederick Pinkerton

C. Frederick Pinkerton

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

GOVERNMENT'S RESPONSE TO CLAIMANT'S
OPPOSITION TO GOVERNMENT'S MOTION TO
STRIKE CLAIMS AND ANSWERS AND MOTION
FOR SUMMARY JUDGMENT

October 19, 1990

COME NOW THE UNITED STATES OF AMERICA, by and through RICHARD J. POCKER, United States Attorney for the District of Nevada and WILL B. MATTLY, Assistant United States Attorney, in response to Claimants opposition to Plaintiff's Motion to Strike Claims and Answers of BRIAN J. DEGEN and KARYN DEGEN and Plaintiff's Motion for Summary Judgement.

The Plaintiff in this action, the United States of America have filed it's Motion to Strike Claims and Answers of BRIAN J. and KARYN DEGEN and Motion for Summary Judgement on May 2, 1990. Claimant's BRIAN J. DEGEN and KARYN DEGEN by and through their attorneys DANIEL W. STEWART, Esq. and C. FREDERICK PINKERTON, Esq. filed their opposition to Plaintiff's Motion on September 7, 1990.

Although Claimants through their attorneys have filed a rather lengthy document in opposition the Plaintiff will be fairly brief in it's response because the Constitutional Issues have already been resolved and are controlled by the Ninth

Circuit case of *United States v. \$129,374.00 in Currency*, 769 F.2d. 583.

Claimants in their long dissertation and diatribe in attacking the Government for denial of Constitutional provisions and overreaching is actually asking the Court to disregard the controlling law in this case as cited above and also is attempting to close the barn door after the horse has already been out and the Ninth Circuit Court of Appeals has decided that the central issue here The Fugitive Disentitlement Doctrine as pronounced in the *Molinaro* and *Conforte* cases is in fact applicable to civil actions.

Claimant raises the issues as did the conservator in the \$129,374.00 currency case of Third Party Interest. This concern was also discussed in *United States v. \$129,374.00 in U.S. currency*, 796 Fed. 583 and as set out below as it was at page 588 of that decision.

The conservator further asserts that application of the *Molinaro* disentitlement doctrine in this case works "to bar any party from contesting these forfeitures." He maintains that individuals who have a potential interest in the property at issue are thereby deprived of their due process rights. But the Government did not argue, nor did the district court hold, that all individuals are precluded from intervening in the civil forfeiture proceeding because of Lewis' fugitive status. Rather, the district court's denial of intervention was limited to the conservator who stood in Lewis' shoes. Indeed, Lewis' girlfriend and his lawyers were not barred by the *Molinaro/Conforte* disentitlement doctrine from pursuing their claims to the property. See, e.g. *Conforte*, 692 F.2d. at 590-94 (deciding claims of Sally Conforte, who was not a fugitive). There individuals with a cognizable interest in the property could have sought leave to intervene. See *id.*

It is clear from the Plaintiff's moving papers requesting the Court to strike the claims of BRIAN and KARYN DEGEN and enter an Order of Summary Judgement that the Government intends to honor all claims of valid third party interests.

It is further the Governments contention as stated on page 4 of its argument that KARYN DEGEN's claims are derivative of her husbands and therefore they should be barred by the Fugitive Disentitlement Doctrine too. To any extent that the property that was acquired by KARYN DEGEN after the marriage which is stated in our moving papers as 3060 North Lake Boulevard and 3457 Waikomo Road should there be sufficient evidence to show that these properties were not subject to the derivative action of the Fugitive Disentitlement Doctrine, those claims may be properly heard. However, it is the Government's position that such evidence is not available and has not been produced to this point.

The Government once again emphatically states that the *Molinaro Conforte* Doctrine applies to civil cases as set forth once again in the \$129,374.00 in United States currency (supra) at page 588 as follows:

We pointed out that "there is no indication in the Court's decision [in *Molinaro*] that the rule stated has any less vitality in civil cases." 692 F.2d. at 589. Rather, we observed that "[t]o the contrary,... the (*Molinaro*) rule should apply with greater force in civil cases where an individual's liberty is not at stake." *Id.* (emphasis added). See also *Doyle v. United States Department of Justice*, 668 F.2d. 1365, 1365-66 (D.C. Cir. 1981) (per curiam) (Freedom of Information Act action filed by a fugitive was barred under *Molinaro*), cert.denied, 455 U.S. 1002, 102 S.Ct. 1636, 71 L.Ed.2d.879 (1982); *Broadway v. City of Montgomery*, 530 F.2d. 657, 659 (5th Cir. 1976) (appeal from summary judgment in civil

rights action brought by fugitive dismissed under *Molinaro*).

The conservator also asserts that *Molinaro* and its progeny only delay the time when an appeal will be heard and do not completely foreclose the right to judicial review. We also disagree with this argument. Although in some cases, e.g. *Conforte*, 692 F.2d. at 590, courts have generously allowed a fugitive leave to seek reinstatement of the appeal should he surrender to the authorities within a given period, a court clearly has the power to dismiss the appeal without granting any such grace period. Indeed, in *Molinaro* the Court did not hold the appeal in abeyance; it dismissed the appeal entirely. 396 U.S. at 366, 90 S.Ct. at 498.

From the above cited language it is clear that the *Molinaro, Conforte* doctrine applies in the case at barr and it is not necessary to reinvent the wheel as Claimants counsel attempted to do in citing the alien cases and those originating in 1897 which clearly are not applicable in this case.

Throughout Claimant's Points and Authorities, Claimants is raising the due process clause and somehow attempting to dispute the well settled Fugitive Disentitlement Doctrine on the basis that Mr. Degen should be able to appear through his counsel and remain abroad and in the fugitive status and be able to protect his property. Clearly the Fugitive Disentitlement Doctrine does not allow this.

The Government has clearly set forth in it's Complaint with specificity and the affidavit attached to the Complaint as well as the affidavit of DOROTHY NASH HOLMES which put the Claimant BRIAN J. DEGEN on notice of what it is that the Government is contending and the affidavit attached to the Complaint is sufficient to shift the burden of the Claimant to come forward and defend against the Complaint. The Defendant/Claimant BRIAN J. DEGEN has chosen not to do so and therefore the Court should enter an Order of

Summary Judgement in it as well as an order dismissing Claimants claim that he filed in this action.

Claimants have attempted to rely on the First Circuit case of *United States of America v. Pole, No. 3172 Hopkinton, etc.* 852 F.2d. at 636. However, this case is not sufficient to nullify a case of the Ninth Circuit or even raise a question because in that case there was a question as to the affidavit and whether or not the money came from drugs as well as the fact that it appeared that it was only the mortgage payments that was being applied where the source was drug money. In our case, mr. DEGEN has been engaged in the trafficking of drugs for twenty years, much longer than he has been engaged in any action of contracting or building. It is clear from the affidavits on file in this case that in order for Mr. DEGEN to defend his case he must come forward, submit himself to the jurisdiction of the Court and prove that the money used was not in fact derivative of drug money. Until Mr. DEGEN does this, the Court should enter an Order forfeiting as previously requested all of Mr. DEGEN and KARYN DEGEN interests because they are derivative from drug activities.

CONCLUSION

For the reasons stated above and the Motion previously filed in this case, the Plaintiff, United States of America respectfully requests that the Motion previously filed for dismissal of Claimants claim and entry of Summary Judgement be granted.

RICHARD J. POCKER
United States Attorney

Date: 10/19/90 /s/ Will B. Mattly
WILL B. MATTLY
Assistant United States Attorney

(Certificate of service omitted in printing)

UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

(Title Omitted in Printing)

GOVERNMENT'S RESPONSE TO CLAIMANT KARYN DEGEN'S FIRST SET OF INTERROGATORIES TO PLAINTIFF

May 10, 1991 (Docketed)

* * *

INTERROGATORIES

INTERROGATORY NO. 1: Identify the investigating officer who is the most knowledgeable, with respect [sic] the allegations by the plaintiff, that the properties identified in Exhibits D, G, H, I, J, K, P, Q, S, U and W of the plaintiff's First Amended Complaint were purchased with proceeds from the exchange of controlled substances or, alternatively, that the properties were used to facilitate the commission of controlled substance violations as set forth in paragraph 12 of the plaintiff's First Amended Complaint for Forfeiture in Rem.

ANSWER: RONALD M. DAVIS, Special Agent
Drug Enforcement Administration

* * *

INTERROGATORY NO. 4: With respect to the properties, business interests, and bank accounts identified in Interrogatories No. 1, 2 and 3 above, identify specifically any

and all transactions, or incidents, in which an exchange of a controlled substance created proceeds which were used to purchase property, business interests, or bank accounts described herein. For each and every incident or transaction, please identify:

ANSWER: Please see attached affidavit of Special Agent Ronald M. Davis of February 21, 1990 and Exhibits.

- (a) The parties involved in the incident or transaction;
- (b) The approximate date and time of any exchange or transaction;
- (c) The controlled substances allegedly exchanged;
- (d) The amount allegedly received in the transaction or exchange;
- (e) All persons who allegedly received a sum of money in the transaction or exchange;
- (f) All parties with any knowledge of the transaction or exchange.

ANSWER: The following are parties who are mentioned in the above affidavit as having any knowledge of the transaction or exchange and their corresponding confidential source number plus other parties that have knowledge of these transactions.

CS-1	ROBERT CLARK
CS-2	CAROL FOLEY
CS-3	ELIZABETH SIDDELL (Sue) DEAN
CS-4	STEVEN BLEISDALE
CS-5	WILLIAM A. AHRENS
CS-6	JOSEPH QUINN
CS-7	RICHARD TEGNER
CS-8	JOHN GOMEZ-HALL
CS-9	MICHAEL MARKOVICH
CS-10	JAMES VALLIER
CS-11	JAMES GRIFFIS

Other persons who are familiar with the MANCUSO/DEGEN transactions described in the attached affidavit.

JEFFREY WELCH
 MARCUS ZYBACH
 ROBERT HOFFMAN
 DAMYON (DAN) STOLANO
 DENNIS MARR
 JAMES BRADLEY STOCKMAN
 BUFF TOULON

* * *

AFFIDAVIT

Ronald M. Davis, being first duly sworn, deposes and states:

1. That I am a Special Agent of the Department of Justice, Drug Enforcement Administration and have been a federal narcotics enforcement officer for nineteen (19) years. In my capacity as a Special Agent, I have received specialized training in law enforcement, particularly the enforcement of the laws regarding controlled substances and asset forfeitures as found in Title 21, United States Code. As a result of my training and in connection with my office, I have provided testimony before judicial officers involving prosecutions of individuals accused of violating drug laws.

2. Based upon my training, experience and participation in numerous drug trafficking investigations involving large amounts of marijuana and/or other controlled substances, I have learned:

a. That drug traffickers often place assets in names other than their own (nominee names) to avoid detection by law enforcement;

b. That drug traffickers often place assets in corporate entities in order to avoid detection by law enforcement agencies;

c. That even though these assets are in nominee names, drug traffickers continue to use these assets by exercising dominion and control over them;

d. That in the last ten (10) years or so, drug traffickers have increasingly utilized off-shore corporate entities and bank accounts in the Grand Cayman Islands as a refuge for the drug proceeds and more recently have begun to use Swiss bank accounts and financial transactions for the same purpose.

e. That the courts have recognized that unexplained wealth is probative evidence of crimes motivated by greed, in particular trafficking in controlled substances.

f. That it is common for drug traffickers to conceal within their residences and vehicles records pertaining to their illegal activities and transactions. Often these records will include: airline tickets and travel itineraries, passports, navigational charts, flight logs, bank records, and telephone numbers of co-conspirators involved in the smuggling organization.

3. Since 1968, the Ciro MANCUSO/Brian DEGEN drug trafficking organization has been investigated by: the Drug Enforcement Administration (DEA), the United States Customs Service (USCS), the Federal Bureau of Investigation (FBI), the Federal Bureau of Narcotics and Dangerous Drugs (BNDD), and various state and local law enforcement agencies. Since 1985 the Federal/Nevada Organized Crime Drug Enforcement Task Force has been actively investigating the historical and on-going drug trafficking operations of this group.

4. That I am thoroughly familiar with the information contained in this affidavit either through personal investigation, review of records, debriefings of informants or discussions with other special agents of the Drug Enforcement Administration, the Internal Revenue Service, the United States Customs Service and the United States Marshal Service.

5. Investigation into the MANCUSO/DEGEN organization has developed at least eleven independent confidential sources of information (CS) who have detailed their knowledge of the drug smuggling activities of the Ciro MANCUSO/Brian DEGEN organization over the last twenty years. The following individuals have consistently been identified by the informants as core members of the organization:

- a. CIRO MANCUSO - Organization Leader
- b. BRIAN DEGEN - Organization Leader
- c. JOHN S. FAGAN - Lieutenant
- d. WILLIAM PEARCE - Pilot/off-loader/money courier
- e. JAMES VALLIER - Marijuana distributor
- f. JEFFREY WELCH - Distributor/off-loader
- g. MARCUS ZYBACH - Boat captain

6. A confidential informant (CS-1) has been debriefed for more than 100 hours regarding his knowledge of the MANCUSO Organization. All of the information provided by CS-1 has proven to have been both credible and reliable. More specifically, this source has provided information to both the United States Customs Service and the Drug Enforcement Administration which has involved more than twenty-five (25) separate investigations resulting in sixteen (16) convictions, and the seizure and forfeiture of 6.2 million dollars in drug assets. CS-1 is a former co-conspirator of MANCUSO and DEGEN.

7. As a result of his affiliation with CIRO MANCUSO, CS-1 has known WILLIAM GEORGE PEARCE, Sr., BRIAN DEGEN, JAMES VALLIER, and other members of the organization for more than twenty years. CS-1 relates that he became involved in distribution of marijuana in 1966-1967. He later was involved in the smuggling of marijuana into the United States from Mexico along with a group of individuals that included those mentioned above. The method employed for the transportation of the marijuana involved flying drug-laden aircraft from various locations in Mexico to clandestine landing locations in the deserts of Arizona and Nevada.

8. CS-1 identifies WILLIAM PEARCE as one of the pilots of those aircraft, and a lieutenant within the organization. Records maintained by the Federal Aviation

Administration (FAA) indicate that WILLIAM PEARCE was, in fact, a certified commercial pilot (Certificate #1305761).

9. In addition, CS-1 identifies PEARCE as sharing responsibilities for the brokering and distribution of wholesale quantities of marijuana, and the illegal (unreported) transportation of United States currency from the United States to various foreign countries. During undercover conversations between CIRO MANCUSO and CS-1, MANCUSO told CS-1 that PEARCE was one of the persons utilized to transport currency from the United States to various foreign countries in order to finance drug transactions. Witnesses and airlines and hotel records have revealed that the MANCUSO/DEGEN Organization usually financed their marijuana loads by transporting payments from the United States to Hong Kong. Witnesses have also revealed that members of the MANCUSO/DEGEN Organization often made trips to Thailand to arrange details for the marijuana shipments.

10. Official government records from Cloud County Sheriff's Office indicate that CIRO WAYNE MANCUSO and BRIAN JOHN DEGEN were arrested in August, 1969 and charged with harvesting marijuana in the State of Kansas. (Exhibit A) They were 21 years old.

11. From that time to approximately 1971, CS-1 has advised your affiant that he was involved in smuggling marijuana with MANCUSO and DEGEN via private aircraft from Mexico to the United States. He has stated that they smuggled approximately 50 airplane loads of marijuana from Mexico to the state of Nevada where the marijuana would be off-loaded from the aircraft on dry lake beds, and then transported by trucks to Santa Cruz, California where it would be distributed. This informant has stated that the average amount of marijuana per plane load ranged from 350 to 800 pounds depending upon the size of the aircraft, and that total marijuana smuggled during this period was approximately 35,000 pounds. The 35,000 pounds of

marijuana smuggled by the organization during this time period had a wholesale value in the United States of \$225.00 per pound for a total of \$7,875,000.00 gross, according to CS-1. CS-1 has further stated that he/she ceased the drug-smuggling business with the organization in 1971 because MANCUSO moved to Guadalajara, Mexico to establish himself as a marijuana broker there.

12. DEA reports, a state Department cable and Mexican federal police fingerprint records, together with information provided by numerous informants, reveal that CIRO MANCUSO was arrested in March, 1972 in Guadalajara, Jalisco, Mexico, (Exhibit B), with ten other individuals, four of whom were United States citizens. At that time, 2,200 kilograms of marijuana was seized. Also seized was a Cessna aircraft No. N2679R which was registered to CIRO MANCUSO's father in California. As a result of that arrest, CIRO MANCUSO was in jail in Mexico until approximately May of 1973 when he was released. Numerous informants have advised your affiant that MANCUSO continued to deal marijuana from jail in Guadalajara, Mexico and that he was allowed to operate a furniture business from within the jail. The furniture was used as a vehicle for shipping marijuana to the United States from Mexico. Degen was reported to arrange the furniture shipments through "Tranquility Imports" to a shop owned by James Phelps in Palo Alto, California. Further, according to CS-1, when MANCUSO was released from jail he recovered 4,000 pounds of marijuana hidden in a false wall in his residence in Guadalajara, Mexico. This marijuana had not been located when MANCUSO was arrested. From that day forward MANCUSO made a habit of storing marijuana in false walls.

13. Two separate witnesses have informed investigators that they were hired by MANCUSO and DEGEN after MANCUSO's release to install secret compartments into travel trailers which were used to import marijuana from Mexico. Both witnesses indicate that MANCUSO and

DEGEN successfully imported many loads of marijuana during 1974 in this manner.

14. Your affiant has learned through this investigation that in 1976, MANCUSO and DEGEN arranged for one of the altered travel trailers to journey to Thailand and return with one ton of marijuana which was sold for \$1,800.00 a pound for a total gross profit to MANCUSO of \$3,960,000.00. At the same time, MANCUSO and others arranged for a similar travel trailer operation to travel to Morocco to obtain a load of hashish which was to be transported through Europe and back to America. This particular vehicle was towed with an automobile (Exhibit C) driven by CS-2, CS-3 and CS-4. They were arrested in Marseilles, France when over 500 kilograms of hashish were discovered. They subsequently spent over three years in prison in France for this drug transporting offense. They have been interviewed and reported to investigators that the controlled substances were an operation of "CIRO and BRIAN".

15. CS-3 was interviewed by OCDETF Agents and claimed that he met DEGEN at dinner in Lyon, France, during the above smuggling operation.

16. Your affiant was advised by CS-5 that he was a carpenter doing construction work on one of MANCUSO's residences at Stateline, Nevada. MANCUSO had approached CS-5 after the completion of MANCUSO's residence and informed CS-5 that he had a travel trailer that MANCUSO wanted CS-5 to modify for a smuggling venture. CS-5 agreed to do this. MANCUSO then delivered a Kenskill travel trailer to CS-5's residence in Reno, Nevada where CS-5 repaired and rebuilt the trailer. CS-5 stated that the trailer had a hidden compartment across the rear of the trailer. CS-5 was paid \$1,500.00 for his services.

17. Your affiant was advised by CS-5 that in 1976, MANCUSO again asked CS-5 to rebuild a travel trailer for

smuggling. By this time CS-5 had been introduced to BRIAN DEGEN by MANCUSO who identified DEGEN as his smuggling partner. CS-5, CIRO MANCUSO, BRIAN DEGEN and 2 others then incorporated a cabinet-making and carpentry business they called "High Sierra Millworks" in Nevada. (Exhibit D) some of the travel trailer alterations were then done at the shop of High Sierra Millwork, according to CS-5. CS-5 also met JAMES VALLIER through MANCUSO and DEGEN and knew VALLIER to be a distributor of MANCUSO and DEGEN's marijuana. CS-5 was instructed by MANCUSO to deliver the modified trailer to CS-6 in Roseburg, Oregon.

18. CS-5 stated that after he had delivered the trailer to CS-6, MANCUSO asked CS-5 if he wanted to participate in the smuggling venture. CS-5 agreed and MANCUSO gave CS-5 \$20,000.00 to take with him to Thailand to give to DEGEN. CS-5 recalled staying at the Intercontinental Hotel his first night in Bangkok. CS-5 stated that DEGEN came to his room the following day to collect this \$20,000.00. CS-5 stated that he and DEGEN drove to Pattaya Beach, Thailand where they checked into a hotel for several days. During that time DEGEN and CS-5 discussed their smuggling plan to get marijuana out of Thailand and into the United States.

19. CS-5 stated that they then drove to another city in Thailand and eventually met with CS-6 and his family who were pulling the travel trailer.

20. CS-5 stated that he and DEGEN took the trailer to a residence owned by a Thai named Lux. Lux has been identified as Luxana Phaksuwan, a Thai national residing in Belmont, California, as an foreign exchange student and MANCUSO and DEGEN's marijuana Thai source of supply.

21. CS-5 stated that he and DEGEN loaded the marijuana, approximately 1100-1200 pounds, into the false compartment of the trailer. CS-5 then took the trailer back to CS-6 for shipment back to the United States via Canada.

CS-5 stated that he was paid \$35,000.00 for his part by either MANCUSO or DEGEN.

22. CS-6 has advised federal authorities that he was instructed to ship the travel trailer to Singapore, Malaysia. CS-6 was then instructed to take his family and fly to Singapore and retrieve the trailer once it had arrived. CS-6 stated that he then towed the trailer to Pattaya Beach, Thailand where he met with DEGEN. CS-6 stated that DEGEN and several other people took the trailer loaded it with Thai marijuana in the false compartment area and returned it to CS-6.

23. CS-6 stated that he then had the trailer shipped back to Vancouver, B.C. while CS-6 and his family flew back to the United States. CS-6 stated that he picked up the trailer in Vancouver, B.C. and crossed the United States/Canada border. CS-6 stated that he eventually drove that trailer to a residence in Grass Valley, California, and delivered the trailer to BRIAN DEGEN and several other associates.

24. CS-6 stated that the trailer was unloaded and that CS-6 was paid \$45,000.00 plus expenses for his trip to Thailand.

25. CS-5 stated that MANCUSO asked CS-5 to assist in another marijuana smuggling venture. CS-5 was instructed to go to Newport Beach, California, for MANCUSO and DEGEN to purchase a sail boat. CS-5 purchased a sail boat named "Drifter" (Exhibit E) and it was sailed from Newport Beach, California to Oakland, California. Both DEGEN and MANCUSO assisted in transporting that vessel part of the way.

26. CS-5 was instructed by MANCUSO and DEGEN to derig the vessel "Drifter" and prepare it for shipment to Singapore. DEGEN and MARCUS ZYBACH, in the name of "Deep Sea Adventures, Inc.", a Grand Cayman Island corporation (See Exhibit F) arranged for the shipment of the vessel "Drifter" on the freighter "MONTANA" to Singapore.

(Exhibit G). CS-5 stated that on February 10, 1977 he flew to Singapore and met with DEGEN and other co-conspirators. CS-5 stated that it was DEGEN's responsibility to oversee the logistics of the trip and MANCUSO's responsibility to secure the marijuana.

27. CS-5 stated that two other crew members, MARCUS ZYBACH, a Swiss National and CS-7 sailed the vessel "Drifter" from Singapore to a location near Pattaya Beach, Thailand. CS-5 stated that they met with MANCUSO and PHAKSUWAN where the "Drifter" was loaded with 2,500 pounds of marijuana.

28. CS-5 stated that he and CS-7 along with ZYBACH sailed the "Drifter" from Thailand into San Francisco Bay. (Exhibit H) There they were met by DEGEN and JEFFREY WELCH as well as other co-conspirators. The marijuana was off-loaded and transported to WELCH's residence in Healdsburg, California.

29. U.S. Customs authorities in San Francisco seized the "Drifter" after the Coast Guard did a routine search and found over 15 pounds of marijuana hidden under the floorboards of the boat. (Exhibit I). CS-5 and CS-7 advised officers that one ton of marijuana had earlier been removed but a crew member was attempting to hide his own personal portion of that marijuana and forgot that he had hidden it under the floorboards. When it was discovered, CS-7 and another individual were arrested, subsequently prosecuted and sentenced. Federal authorities have debriefed those individuals and obtained statements regarding their participation and have also obtained documents corroborating the various steps of the smuggling operation. The one metric ton of marijuana imported on the "Drifter" would have sold for \$1,800.00 per pound for a gross profit to MANCUSO/DEGEN of \$3,915,000.00, according to prices provided by CS-1.

30. CS-1 has informed your affiant that during 1979, he/she smuggled 15,000 pounds of marijuana into the United States and he/she utilized the MANCUSO/DEGEN organization to distribute approximately 7,000 pounds of this marijuana for a gross profit to the organization of \$9,800,000.00. He/she indicates that other individuals involved with MANCUSO at that time included EDWIN JAMES VALLIER and others.

31. In December, 1979, CIRO MANCUSO and Andrea MANCUSO, according to real estate transaction documents, (Exhibit J), deeded a lot at 738 Tina Court, Lake Tahoe, to Kaleidoscope, Inc., a Cayman Islands corporation formed by MARCUS ZYBACH. (Agents have received the corporate and bank records of Kaleidoscope, pursuant to a treaty request, from the Government of the Cayman Islands). (Exhibit K). Investigation has revealed that MARCUS ZYBACH is an "engineer" and "boat captain" who has brought numerous vessels with marijuana over from Thailand to the United States. MANCUSO stated in conversations with CS-1, who was operating in an undercover capacity, that ZYBACH "skippered" several loads of marijuana for him and was paid \$1,000,000.00 a year for his services (ZYBACH has been indicted with MANCUSO and DEGEN and is being held in jail, without bail, pending trial. He is the subject of a pending MLAT treaty request to the Swiss.)

32. An anonymous informant telephoned Drug Enforcement Administration officers and reported that in June, 1980, he witnessed CIRO MANCUSO making a payment of \$500,000.00 in cash at his Lake Tahoe house to an unidentified white male. The same individual subsequently reported that within one week, he observed BRIAN DEGEN and a man identified as JURGEN KARL PETER AHERNS, aka: "Joe the German". AHERNS, (identified by numerous informants as an "engineer" who organizes the marijuana smuggling loads from Thailand) met with two Thai males at DEGEN's residence at Lake Tahoe. He observed a suitcase

full of U.S. currency located in DEGEN's wine cellar and the suitcase was later picked up by "Joe the German".

33. Agents subsequently learned that this informant, Dennis Marr, has more recently stated that he provided this information to DEA as a result of his drug arrest in Canada. He now states that he earlier reported hearsay held learned from other MANCUSO/DEGEN associates. He now states that because he was always paid for construction work in "Musty-smelling damp cash that appeared to have been buried in the ground", he assumed the suitcase was full of such cash because it smelled the same. He now denies, however, actually personally seeing the \$500,000.00.

34. A review of the records provided by the Government of the Cayman Islands indicates that in August 1980 CIRO and Andrea MANCUSO opened a corporation they named Keystone Investments, Ltd. in the Grand Cayman islands. They capitalized this corporation with \$900,000.00 in U.S. currency and named themselves as directors. (Exhibit L)

35. Official certified corporate documents from the Cayman Islands reveal that in June 1980, BRIAN DEGEN formed a Cayman Islands corporation named "K.E.S." (Exhibit M). Property transaction records verify that beginning in 1981, BRIAN DEGEN purchased real estate on the island of Kauai in Hawaii in the name of K.E.S. (Exhibit N)

36. Real estate transaction records also reveal that in 1980, BRIAN DEGEN deeded a lot at South Benjamin Street, Lake Tahoe, Nevada to Kaleidoscope, Inc., MARCUS ZYBACH's Cayman Islands corporation. (Exhibit O). The real estate transactions between MANCUSO, DEGEN and Kaleidoscope were all handled by Elizabeth "Becky" Darrow, CIRO MANCUSO's sister. The same land had earlier been quitclaimed to BRIAN DEGEN by James Phelps, the man who helped DEGEN distribute the Mexican marijuana years earlier. (Exhibit P)

37. On September 9, 1981, a Thai male identified as Sunthorn Kraitamchitkul was arrested by U.S. Customs officials in San Francisco when he was found to be carrying \$831,165.35 in unreported currency. The money was seized from him, together with a briefcase. The briefcase was found to be locked and the combination on the briefcase was ultimately determined to be CIRO MANCUSO's birth date. Found in the briefcase in Sunthorn's possession was a copy of the MANCUSO letter directing the transfer of the money from the Keystone Investments bank account for the purchase of a 32 foot Blackfin boat. (Exhibit Q). Also found was some currency from the Cayman Islands, business cards of CIRO MANCUSO, Andrea MANCUSO, BRIAN DEGEN and others associated with the organization. (Exhibit R). Further investigation revealed that Sunthorn had stayed as a guest at MANCUSO's house in Hawaii. In subsequent undercover conversations with CS-1, MANCUSO identified Sunthorn as one of his sources in Thailand for the purchase of marijuana and stated that at one point in time he had given Sunthorn some \$3,000,000.00 in cash. Shortly after his arrest in San Francisco, Sunthorn died of a heart attack.

38. Your affiant has also reviewed official documents provided to the United States by the Swiss Government, pursuant to a treaty between our countries, relative to the financial dealings of CIRO MANCUSO, CIRO MANCUSO Properties, Inc., ALZIRA, and other business entities known to be utilized by CIRO MANCUSO in Zurich, Switzerland. ALZIRA is a Panamanian corporation holding a Swiss bank account which contains CIRO MANCUSO's drug proceeds. In addition, investigators have provided your affiant with information received from a confidential informant (CS-8), regarding the Swiss banking transactions of CIRO MANCUSO.

39. Your affiant has also been provided, pursuant to a Court authorized Order, income tax returns filed by CIRO MANCUSO and BRIAN DEGEN during the years which are

the subject of this investigation, and your affiant has reviewed business records provided, pursuant to Grand Jury subpoena, by CIRO MANCUSO and his accountant, Charles W. Roth, and by DEGEN's accounting firm as well.

40. Real estate transaction records for the period 1979 through 1983 reveal that BRIAN DEGEN was involved in numerous property transactions in Nevada, California and Hawaii. During this same time frame, his reported adjusted taxable income was as follows:

DATE	INCOME
1979	\$45,071.00
1980	\$48,216.00
1981	7,764.00
1982	[\$ 4,287.00]
1983	\$23,490.00

As MANCUSO did, DEGEN also began to operate as a builder and real estate developer, constructing buildings and "spec homes".

41. An examination of the records of BRIAN DEGEN provided by his accounting firm, pursuant to Grand Jury Subpoena, revealed a financial statement prepared in 1986 assessing DEGEN's net worth at \$2,133,353.00. (Exhibit S). Yet, DEGEN's reported adjusted gross income from his tax returns during the years 1984 through 1986 is as follows:

DATE	INCOME
1984	\$21,629.00
1985	\$75,217.00
1986	\$31,971.00

42. Your affiant interviewed CS-9 about his knowledge of the marijuana smuggling activities of BRIAN DEGEN. CS-9 stated that he met DEGEN in the fall of 1984, through JOHN STEVEN FAGAN, a major marijuana and cocaine

distributor in the Tahoe, California area. FAGAN had told CS-9 that DEGEN was a major marijuana smuggler.

43. CS-9 stated that FAGAN was in partnership with DEGEN in preparation for a 5 metric ton marijuana importation that was to be off-loaded in the Stockton, Delta, California area. FAGAN and DEGEN made arrangements for CS-9 to meet with WILLIAM PEARCE, a MANCUSO and DEGEN associate, where the entire off-load of the 5 tons was to be stored at a residence at 6970 Steiger Hill Road, Vacaville, California. PEARCE owned the residence in the name of Pasquaro, Inc., a Cayman Islands corporation (Exhibit T) which was used as a "stash house".

44. In May, 1985, CS-9 was shown the actual off-load area which was located at Zuckerman Farms, on McDonald Island, a private island in the Stockton Delta, near the city of Stockton, California.

45. CS-9 advised that on the evening of May 18, 1985 he assisted in the off-load of 5 metric tons of marijuana. DAN STOIANO, a "lieutenant" for DEGEN, and WILLIAM PEARCE assisted in loading the 5 tons into a white 5-ton cargo van. PEARCE and STOIANO drove that cargo van to PEARCE's "stash house" in Vacaville, California, and it was subsequently off-loaded. CS-9 further stated that during the actual off-load, at the island, he observed DEGEN and FAGAN riding in FAGAN's power boat overseeing the operation.

46. CS-9 stated that once they unloaded the cargo van of the marijuana, it was stored in a detached two-car garage. CS-9 stated that both FAGAN and DEGEN arrived at the "stash house" and inspected the marijuana and discussed the success of the operation. CS-9 stated that through the conversations between FAGAN and DEGEN he learned that DEGEN was the owner of the 5 tons of marijuana.

47. CS-9 stated that he was instructed by FAGAN, who in turn was told by DEGEN, to deliver quantities of that marijuana to several marijuana brokers, including CS-10.

48. CS-9 advised your affiant that after the May 31, 1985 off-load, BRIAN DEGEN instructed CS-9 to take three electronic digital 10 pound capacity scales back to Weight Tronix Scale Company in Sacramento, California for repairs. CS-9 stated that it took approximately two weeks to repair those scales.

49. On May 17, 1989 your affiant served a Subpoena on the above-named scale company. That company provided your affiant with a copy of their records showing CS-9 had delivered 3-model 3230 10 pound capacity scales for repair work. Further documents show that CS-9 delivered those scales on June 7, 1985 and picked them up on June 28, 1985. (Exhibit U).

50. Your affiant reviewed CS-9's long distance telephone toll numbers from his personal telephone which show that CS-9 had called telephone number (916) 485-5700 which is published to Weight Tronix Scale Company, Sacramento, California. That call was placed on June 7, 1985. Further, review of CS-9's telephone tolls show that CS-9 placed several additional calls to Weight Tronix from a pay telephone booth in Vacaville, California, which was near the 6970 Steiger Hill, Vacaville, California "stash house" where DEGEN had the 5 tons of marijuana delivered.

51. Your affiant interviewed CS-10, who is a convicted drug dealer. CS-10 advised that he distributed marijuana for the MANCUSO and DEGEN organization over a twenty year period ending in 1986. He distributed primarily in Northern California and the Lake Tahoe, Nevada areas. CS-10 advised that he participated in purchasing and distributing marijuana from the smuggling ventures in 1985 and 1986. Two individuals to whom CS-10 had distributed marijuana in 1985 and 1986 have corroborated his statements.

52. CS-10 advised your affiant that DEGEN would telephonically contact CS-10, who was residing at Glenbrook, Nevada, instructing CS-10 to drive to the Nut Tree Restaurant in Vacaville, California. The Nut Tree Restaurant is a ten minute drive from the 6970 Steiger Hill Road "stash house". CS-10 was instructed to leave his vehicle in the parking lot where it would be driven away by PEARCE and returned within one hour loaded with boxes of marijuana.

53. CS-10 advised your affiant that he did collect hundreds of thousands of dollars from the sales of MANCUSO'S and DEGEN'S marijuana. CS-10 would then meet with DEGEN to pay him for the purchase of that marijuana. CS-10 stated that he would have to pay DEGEN \$1,250.00 per pound and that CS-10 distributed about 500 to 600 pounds of DEGEN's marijuana. The total payback to DEGEN by CS-10 was approximately \$750,000.00 in U.S. currency.

54. CS-10 stated that he was promised a \$50,000.00 commission for introducing FAGAN to MANCUSO and DEGEN. CS-10 stated that he withheld \$50,000.00 of marijuana proceeds from DEGEN due to this arrangement. CS-10 stated that later DEGEN did not agree with this arrangement and sent him a letter in which he demanded that CS-10 pay him the withheld \$50,000.00.

55. CS-10 stated that DEGEN sent several people, including PEARCE, to collect the \$50,000.00 from CS-10. PEARCE was known to be the "enforcer" for the MANCUSO/DEGEN organization. When CS-10 continued to refuse to pay DEGEN, DEGEN mailed a demand letter to CS-10 from Hawaii where DEGEN then resided.

56. CS-10 was arrested on October 1, 1986 for distribution of marijuana and a Federal Search warrant was executed on CS-10's Glenbrook, Nevada residence. The letter that CS-10 was referring to was seized as evidence from CS-10's office. (Exhibit V).

57. On May 9, 1989, your affiant served a federal search warrant on the 6970 Steiger Hill Road, Vacaville, California "stash house". Attached as Exhibits W1 - W6 is evidence your affiant discovered, including, among other things, a vacuum heat sealing machine (W-1) containing marijuana residue, a white cargo van truck (W-2) containing marijuana residue (W-3), sailing charts of the Stockton Delta, a notebook containing law enforcement radio frequencies (W-4), clothing with insignias of the Cayman Islands, an area in the garage where a false wall had been built (W-5 and W-6) to contain the marijuana which was stored there, as corroborated by CS-9, and numerous papers and documents identified to known MANCUSO/DEGEN associates. Both DEGEN and MANCUSO were named as being present at and responsible for marijuana smuggling ventures that occurred in 1985 and 1986.

58. On October 24, 1989, a 49-count indictment was returned by a Grand Jury in the District of Nevada, Reno in which 18 defendants were charged with numerous violations of drug trafficking, money laundering, perjury, obstruction of justice and other related charges. BRIAN DEGEN was listed as one of three principal organizers of the criminal enterprise (Certified Copy of Indictment enclosed herewith).

59. One of DEGEN's associates in the smuggling and distribution of the marijuana was DAMYAN STOLANOFF, also known as DAN STOLANO. STOLANO assisted in the May 1985 off-load in the Stockton Delta, California area. Your affiant arrested STOLANO on November 19, 1989 in Reno, Nevada. STOLANO was in possession of his United States passport. A review of his passport shows foreign travel from the United States to Hong Kong on September 29, 1985, returning to the United States on October 1, 1985; arriving in Hong Kong from the United States on January 8, 1986, returning on January 11, 1986; traveling to Hong Kong on August 23, 1986 returning to the United States on August 25, 1986. (Exhibit X).

60. Your affiant has interviewed CS-11, a "lieutenant" in the MANCUSO/DEGEN organization. CS-11 advised your affiant that the purchase money for the Thai marijuana was always paid in Hong Kong to the Thai source of supply. CS-11 on a number of occasions transported monies in \$250,000.00 amounts to Hong Kong and hired other co-conspirators to assist in doing the same. CS-11 also stated that once the marijuana was paid for in Hong Kong and the marijuana sold in the United States, it was necessary to transport profits earned by the Thai source of supply back to Hong Kong.

61. CS-11 advised that a 2% fee was paid to the courier for the total amount transported over, usually a \$5,000.00 fee. Due to the fact that STOLANO, on the 3 separate trips to Hong Kong stayed only 3 days each time, it is reasonable to conclude that he, too, was transporting marijuana proceeds back to the Thai source of supply. In January 1986, STOLANO was, in all likelihood, transporting purchase monies for DEGEN for a marijuana load to be done in the summer of 1986. In August 1986, STOLANO was likely transporting the profits of a successful marijuana off-load back to the Thai source of supply.

62. Other witnesses in the instant investigation have reported to agents that when they transported large sums of monies, they generally only stayed a few days in Hong Kong. Air Fare at that time, according to United Airlines, was \$1,700.00 to \$1,800.00 and lodging was \$200.00 per night. Thus STOLANO'S total airfare was approximately \$5,100.00 and his 9 days of lodging cost \$1,800.00, for a total of \$6,900.00 expense for three separate visits. STOLANO lists his employment as an architectural draftsman working for DEGEN, with an annual income of only \$25,000.00 per year.

63. Your affiant also obtained records from Carson City Toyota, Carson City, Nevada where STOLANO purchased a 1985 BMW with cash for \$18,573.00. This purchase was

made July 1985, approximately 7 weeks after the May 30, 1985 5-ton marijuana off-load owned by DEGEN. (Exhibit Y)

64. Your affiant was advised by CS-11, that in December, 1987 and January, 1988, he made arrangements with JOHN FAGAN, (who was then residing in Europe full-time to avoid being arrested by U.S. Federal Authorities), to meet in Zurich, Switzerland for the specific purpose of establishing a Swiss corporation for CS-11. CS-11 stated that FAGAN told him in 1985 that he was shown by BRIAN DEGEN how to set up the Swiss Corporations in Zurich, Switzerland for the exclusive purpose of laundering the millions of dollars generated from the-marijuana proceeds.

65. Your affiant was advised by CS-11 that on or about January 4, 1988, CS-11 met with FAGAN in Zurich, Switzerland. CS-11 and his wife stayed at the Waldhaus Dolder Hotel where they met FAGAN. CS-11 stated that FAGAN introduced CS-11 to FAGAN's banker named Yves, last name unknown (LNU) who is a Swiss male, mid 40's approximately 6'0" tall, weighing about 150 lbs, and wearing glasses. CS-11 stated that Yves (LNU) worked at Pictet & Cie, telephone number 211-6354.

66. CS-11 advised your affiant that Yves called CS-11 at his hotel and introduced CS-11 to a lawyer, Maurice Choquard of the law firm of Mullhaupt-Choquard, telephone number 252-4616.

67. CS-11 stated that he gave Choquard \$15,000.00 in U.S. currency as a fee to set up the Swiss Corporation and a Liechtenstein Trust. CS-11 was instructed to place all the corporation & trust records with another attorney, M. Jenner, telephone number 221-2920, to hold for CS-11.

68. CS-11 advised your affiant that CS-11 gave Choquard \$250,000.00 in U.S. currency and was awaiting the arrival of an additional \$750,000.00 which was being transported by three subjects that CS-11 had hired. CS-11 stated that those three subjects were arrested in Frankfurt,

West Germany and the \$750,000.00 was seized. (Exhibit Z) CS-11 stated when he had learned of the arrest and seizure of his monies, he contacted Choquard, closed the corporation and withdrew the \$250,000.00 and gave it to FAGAN to hold.

69. Your affiant was advised by Deputy United States Marshal Al Patino of Hawaii that in September, 1989, he made an investigation of the DEGEN residence in Hawaii for purposes of attempting to locate BRIAN JOHN DEGEN and serve a subpoena on him. At that time, Patino discovered that DEGEN no longer was residing at his residence in Hawaii. Patino further advised that he had learned from neighbors and Buff Toulon, the manager of DEGEN's Self-Storage facility in Koloa, Hawaii, that BRIAN DEGEN and his family left the country for Switzerland. Toulon further advised Marshal Patino that the DEGENS had left Hawaii approximately 1 year earlier, in about November or December 1988. Patino learned that DEGEN has a residence in Verbier, Switzerland which he currently occupies with his wife and three children.

70. On October 25, 1989, Federal Agents executed search warrants on the residences of BRIAN JOHN DEGEN at 6668 Westlake Boulevard, Homewood, California and in Hawaii and one of the items seized pursuant to the search warrant was a letter from BRIAN DEGEN to his wife Karyn, undated, stating in essence that DEGEN had gotten himself into such trouble he could never return to the United States. (Exhibit AA). Also found was a booklet entitled "How To Save Money by Incorporating In a Tax Haven" featuring Switzerland in Chapter XX, and the "Businessman's Guide to the Cayman Islands." Further, on that same day Federal Agents executed a search warrant on the self-storage business of BRIAN DEGEN in Koloa, Hawaii. It was discovered at that time that DEGEN had deposited his personal papers records, computer and a number of other items in one of his storage units under the phony name of Frank Costa and that

the residence formerly occupied by DEGEN and his family had indeed been abandoned.

71. Agents, pursuant to federal seizure warrants, took possession of property purchased by BRIAN DEGEN in the time frame referenced herein. That property and its appraised market value is:

1. 4915 San Souci Terrace and 4905 West Lake Blvd., Homewood, California; \$65,000.00
2. 1059 Tomahawk Trail, Incline Village, Nevada; \$160,000.00
3. 6660 West Lake Blvd., Homewood, California \$500,000.00
4. 6664 West Lake Blvd., Homewood, California \$400,000.00
5. 6668 West Lake Blvd., Homewood, California \$1,100,000.00
6. 3060 and 3080 N. Lake Blvd., Lake Forest, California; \$990,000.00
7. 3457 Waikomo Road, Koloa, Kauai, Hawaii \$2,200,000.00
8. 5132 Hoona Road, Koloa, Kauai, Hawaii (held in the name of K.E.S. Corporation); \$1,500,000.00
9. Personal property seized, valued at \$130,000.
10. Vehicles and boats seized valued at \$56,000.00.

TOTAL SEIZED ASSETS: \$7,101,000.00

72. Your affiant has learned from review of title search documents that subsequent to the initiation of the Federal Grand Jury investigation in Reno, Nevada in June 1988, both CIRO MANCUSO and BRIAN DEGEN began to transfer assets out of their names and into the names of other family members or third parties. Agents have also learned that

BRIAN DEGEN's storage business at Koloa Self-storage located at 3457 Waikomo was also on the market prior to its seizure by federal agents.

73. Your affiant was advised by Assistant United States Attorney Dorothy Nash Holmes who is prosecuting the MANCUSO/DEGEN Organization in the District of Nevada, that she advised Mr. Donald Heller of the Federal indictment and arrest warrant for BRIAN JOHN DEGEN. Mr. Heller stated that DEGEN was indeed residing permanently in Switzerland, claiming Swiss nationality by virtue of his father's birth in Switzerland, and had no intention of returning to the United States. Further, your affiant learned at that time that DEGEN had been out of the country for almost one year and had not been in Hawaii as previously represented by his parents who testified before the federal Grand Jury in May, 1989. Your affiant additionally learned that shortly after DEGEN's parents appeared before the Grand Jury, BRIAN DEGEN met with his attorney in the Cayman Islands, away from the United States, in order to discuss their approach to the investigation and indictment.

74. Your affiant displayed to confidential sources and witnesses a photograph album consisting of 180 photographs of subjects who have been involved with the MANCUSO/DEGEN organization over the past 20 years. That photo album contained four different photographs of DEGEN covering the past twenty years. That photo album was shown separately to CS-1, CS-5, CS-6, CS-7, CS-9, CS-10 and CS-11. All seven witnesses have identified DEGEN's photograph as the person who was responsible for the marijuana smuggling ventures from 1969 through 1985.

75. Your affiant has not yet displayed the photo album to CS-2, CS-3 and CS-4.

76. In addition, after federal search warrants were executed on the residences of CIRO MANCUSO and WILLIAM PEARCE, agents discovered photographs of

BRIAN DEGEN at both of those houses. DEGEN's name and telephone number were also found in PEARCE's address book.

Your affiant swears under penalty of perjury that the foregoing information is true and correct to the best of his knowledge and belief and that all Exhibits attached hereto are true and accurate copies of records reviewed by your affiant.

/s/ Ronald M. Davis
RONALD M. DAVIS
Special Agent

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

UNITED STATES' MOTION
FOR SUMMARY JUDGMENT

December 2, 1992

Comes now the United States of America, through its undersigned counsel, and moves this Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

This motion is based upon the declarations of Ciro Wayne Mancuso, Michael McCreary, Catherine Bryant, and Greg Addington filed and served herewith.

The grounds for this motion are that the defendant properties, and each of them, represent proceeds of an illicit drug trafficking enterprise which spanned nearly twenty years. Furthermore, specific items of property, identified below, were used to facilitate the exchange, transportation, and use of controlled substances. Accordingly, the defendant properties, and each of them, are forfeit to the United States pursuant to 21 U.S.C., Sections 881(a)(6) and (7) and judgment should be entered accordingly.

This motion is supported by the memorandum of law which is filed and served herewith.

MONTE N. STEWART
United States Attorney

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MEMORANDUM OF LAW IN SUPPORT
OF UNITED STATES' MOTION
FOR SUMMARY JUDGMENT

I.

INTRODUCTION

This action was commenced by the United States on October 24, 1989 with the filing of a complaint for forfeiture *in rem*. The case was assigned case number CV-N-89-397-ECR. Several individuals filed claims to the various defendant properties and it became apparent that judicial efficiency would be best served by severing certain items of properties which were the subjects of similar claims. Accordingly, with leave of Court, a separate complaint for forfeiture *in rem* was filed on March 23, 1990 and assigned the case number which coincides with this pleading.

Two persons, Brian Degen and Karyn Degen (husband and wife), filed claims to the defendant properties. The claims of Brian Degen have been adjudicated by this Court by Order entered January 4, 1991 whereby summary judgment was entered in favor of the United States. The January 4, 1991 Order resulted from the application of the "Fugitive Disentitlement" doctrine and Brian Degen's status as a fugitive. See *U.S. v. Ciro Wayne Mancuso, et al.*, CR-N-89-24-ECR.

The remaining claims of Karyn Degen have been the focus of the present litigation. A series of stipulations has been filed extending the time for completion of discovery, extending the time for the filing of a pretrial order, and extending the time for the filing of dispositive motions. The latest stipulation provided for a December 2, 1992 deadline for the filing of dispositive motions. Although it is unclear whether the Court has approved the latest stipulation, this motion is filed in accordance with the deadline provided therein.

For the convenience of the Court, a copy of Karyn Degen's amended claim is attached hereto as Exhibit A.

II

STATEMENT OF FACTS

The United States refers to the comprehensive declarations filed and served herewith. Taken together, the declarations provide a consistent picture of a vast marijuana trafficking enterprise which has been active since 1969. Brian DEGEN has been at the center of this enterprise and has had no other source of income during his entire adult life. Brian DEGEN began trafficking in marijuana at the age of 22, while still in college and long before his marriage to claimant Karyn DEGEN. Brian DEGEN began acquiring real estate and other properties in 1973, investing the proceeds of his drug trafficking activities and using a furniture store as a "front."

Brian DEGEN married Karyn DEGEN on February 15, 1981. Karyn DEGEN accompanied her husband on smuggling trips, was present when smuggling trips were being planned and discussed, and participated in the transport of currency to overseas banks. Karyn DEGEN did not work in any capacity except as an adjunct to her husband's drug smuggling "business."

In short, the declarations provided herewith demonstrate that neither Brian DEGEN nor Karyn DEGEN was ever occupied in any legitimate income-producing activity. Everything they acquired prior to their flight to Switzerland was purchased or financed with the proceeds of a multi-million dollar marijuana smuggling enterprise. Additionally, the real property located at Tahoma, California was used to meet with marijuana distributors and to meet with DEGEN's co-conspirators.

The following recitation of facts is a summary of the comprehensive declarations which are incorporated herein by reference.

1. Brian DEGEN was born in December, 1947. Karyn DEGEN (Peterson) was born in December, 1956. They were married on February 15, 1981.

2. While Brian DEGEN was attending college in South Lake Tahoe, he became acquainted with Ciro Mancuso, Michael McCreary, James Bradley Stockman, Jeffrey Welch, and Robert Clarke.

3. Beginning with a trip to Kansas in 1969 (at the age of 21) to harvest wild marijuana, Brian DEGEN began a career which would bring him well in excess of \$1 million per year by 1977.

4. At no time in Brian DEGEN's adult life did he have any source of legitimate income. Likewise, following their marriage, the DEGEN's had no source of joint income which was not tainted by the enormous profits being earned through drug trafficking.

5. The property located at 623 Alma Way, Zephyr Cove, Nevada was purchased by Brian DEGEN in 1973 with the proceeds of drug trafficking. Brian DEGEN's mother's name (Violet a/k/a Mary Degen) was placed on the title to the property in order to conceal the extent of Brian DEGEN's ownership at a time when he had no apparent source of income. Brian DEGEN routinely used his mother's home to store cash accumulated through drug trafficking. The Alma Way home was not seized because it had been sold prior to this action being commenced, with the proceeds of sale being used to acquire property in Kauai, Hawaii (see para. 15, below).

6. Brian DEGEN earned in excess of \$60,000 in 1972 from drug trafficking. Brian DEGEN earned in excess of \$100,000 in 1973 from drug trafficking.

7. The property located at 6668 West Lake Boulevard, Tahoma, California (Exhibit J to complaint) was purchased by Brian DEGEN in 1975. Karyn DEGEN has no interest in the property, community or otherwise. Furthermore, the property was used by Brian and Karyn DEGEN to store marijuana proceeds, to plan marijuana smuggling operations, and to meet with marijuana distributors.

8. The property located at 6664 West Lake Boulevard, Tahoma, California (Exhibit I to complaint) was purchased by Brian DEGEN in 1980. Karyn DEGEN has no interest in the property, community or otherwise.

9. The property located at 6660 West Lake Boulevard, Tahoma, California (Exhibit H to complaint) was purchased by Brian DEGEN after his purchase of the 6664 West Lake Boulevard property. Karyn DEGEN has no interest in the property, community or otherwise.

10. Brian DEGEN earned in excess of \$1.1 million in 1977 through drug trafficking. Brian DEGEN earned in excess of \$1.4 million in 1979 through drug trafficking. Brian DEGEN earned in excess of \$1.3 million in 1980 through drug trafficking. Brian DEGEN and Karyn DEGEN (married in February, 1981) earned in excess of \$1.5 million in 1981 through drug trafficking.

11. The property located at 1059 Tomahawk Trail, Incline Village, Nevada (Exhibit D to complaint) was purchased by Brian DEGEN in late 1978. Karyn DEGEN has no interest in the property, community or otherwise.

12. The property located at 3060 and 3080 North Lake Boulevard, Lake Forest, California (Exhibit K to complaint) was purchased by Brian DEGEN in 1979. An office building was constructed on the property and the premises were rented to commercial tenants. Following the DEGEN's marriage, title to the property was altered to reflect the following ownership: "Brian John Degen, a married man, as his sole and separate property, as to an undivided 1/2 interest and

Brian John Degen and Karyn Degen, husband and wife, as to an undivided 1/2 interest."

13. The adjoining lots located at 4915 San Souci Terrace and 4905 West Lake Boulevard, Homewood, California (Exhibit G to complaint) were purchased by Brian DEGEN and Ciro MANCUSO in 1980. Karyn DEGEN has no interest in the properties, community or otherwise.

14. The property located at 5132 Hoona Road, Koloa, Kauai, Hawaii (Exhibit Q to complaint) was purchased by Brian DEGEN in January, 1981. Title to the property was passed to "KES Corporation" in order to conceal the extent of Brian DEGEN's ownership of the property. KES Corporation was a Cayman Islands corporation owned by Brian DEGEN since 1980. Brian DEGEN and Karyn DEGEN each claimed this property in their initial claims filed with this Court. Brian and Karen DEGEN thereafter filed an amended claim deleting the reference to this property and to KES corporation, Brian DEGEN having elected to dissociate himself from KES corporation. Prior to his flight to Switzerland, Brian DEGEN used a KES corporate account to deposit his marijuana trafficking proceeds.

15. The property located at 3457 Waikomo Road, Koloa, Kauai, Hawaii (Exhibit P to complaint) was purchased by Brian DEGEN in 1987. This property is the so-called "Koloa Self-Storage" property. The purchase of the property was made possible by the sale of property located at 5166 Lawaii Road, Kauai, Hawaii (Exhibit U to complaint) and the sale of the property located at 623 Alma Way, Incline Village, Nevada (see para. 5, above).

16. Additional properties were purchased by Brian DEGEN and later sold at a profit. The proceeds of such transactions are described in Exhibit U to complaint. The details of the transactions, including the efforts of Brian DEGEN to conceal his role in the transactions, are described in the declarations filed and served herewith.

17. In addition to the real property described above, forfeiture is sought as to the bank accounts of Brian and Karyn DEGEN in Hawaii, Sacramento, and Tahoe City.

18. In addition to the real property and bank accounts, forfeiture is sought as to multiple items of personal property, including household furnishings, vehicles, tractors, a wine collection, exercise equipment, and office equipment. The Court is referred to the amended claim of Karyn DEGEN (attached hereto as Exhibit A) for a complete list of items claimed by Karyn DEGEN.

19. In late 1988, Brian DEGEN informed his drug trafficking partner and personal friend that he was fleeing to Switzerland to avoid prosecution.

The above summary describes the conduct of Brian DEGEN and the connection between that conduct and the properties at issue herein. The Court is referred to the declarations for a comprehensive recitation of Brian DEGEN's marijuana trafficking activities, the acquisition of assets by Brian DEGEN, and the role of Karyn DEGEN in her husband's smuggling enterprise.

III.

ARGUMENT

A. The Proper Standard For Summary Judgment.

The proper standard for granting a Motion for Summary Judgment is where "there is no genuine issue as to any material fact" and where "the moving party is entitled to judgment as a matter of law." Rule 56(c) of the Federal Rules of Civil Procedure; *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *Poller v. C.B.S.*, 368 U.S. 464, 467 (1962). The purpose of summary judgment is to pierce the pleadings and to assess the proof in order to determine whether there is a genuine need for trial. *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574 (1986). "Where the record taken as a whole could not lead a rational

trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita*, 475 U.S. at 587, quoting *First National Bank of Arizona v. Cities Services Co.*, 391 U.S. 253, 289 (1968).

The Supreme Court in 1986 issued three opinions which, taken together, explain the pertinent standards for evaluating a motion for summary judgment. The cases are *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita*, supra. These cases clarify the standard for summary judgment in federal courts. See also, Schwarzer "Summary Judgment: A Proposed Revision of Rule 56," 110 F.R.D. 213; and Schwarzer, "Summary Judgment under the Federal Rules: Defining Genuine Issues of Material Fact," 99 F.R.D. 465. Judge Schwarzer's article is widely cited as authority in federal cases throughout our nation, including citation by Justice Renquist in *Celotex*, 477 U.S. at 327.

Rule 56(c) of the F.R. Civ. P. states that the motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." This phrase has caused confusion in the federal courts as to the degree of burden of proof required from the moving and nonmoving parties. The matter has been laid to rest by the Supreme Court in *Celotex*, supra. In an opinion by Justice Renquist, the Court stated:

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's

case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. "[T]h[e] standard [for granting summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a). . . ." (Citation omitted).

Celotex Corp., 477 U.S. at 322-323.

In his majority opinion in *Anderson*, supra, Justice White addressed this misconstrued rule by stating as follows:

As the Court long ago said in *Improvement Co. v. Munson*, 14 Wall. 442, 448, 20 L.Ed. 867 (1872), and has several times repeated:

'Nor are judges any longer required to submit a question to a jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such a character that it would warrant the jury in finding a verdict in favor of that party. Formerly it was held that if there was what is called a scintilla of evidence in support of a case the judge was bound to leave it to the jury, but recent decisions of high authority have established a more reasonable rule, that in every case, before the evidence is left to the jury, there is a preliminary question for the judge, not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.' (Footnotes omitted.)

* * *

The Court has said that summary judgment should be granted where the evidence is such that it 'would require a directed verdict for the moving part.' *Sartor v.*

Arkansas Gas Corp., 321 U.S. 620, 624, 64 S.Ct. 724, [727], 88 L.Ed. 967, [971] (1944). And we have noted that the 'genuine issue' summary judgment standard is 'very close' to the 'reasonable jury' directed verdict standard: 'The primary difference between the two motions is procedural; summary judgement motions are usually made before trial and decided on documentary evidence, while directed verdict motions are made at trial and decided on the evidence that has been admitted.' *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 745, n. 11, 103 S.Ct. 2161, [2171, n. 11], 76 L.Ed.2d 277 [290-291, n. 11] (1983). In essence, though, the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.

Anderson v. Liberty Lobby, Inc., 477 U.S. at 251-252.

In summary, there are two alternative ways in which a moving party may obtain summary judgment. First, the moving party may affirmatively demonstrate that there is no genuine issue of a material fact to sustain the nonmoving party's claim. Alternatively, the moving party may demonstrate its ability to win under the directed verdict standard i.e., no reasonable jury could differ on the verdict based upon the evidence presented. *Lindahl v. Air France*, 930 F.2d 1434, 1436-37 (9th Cir. 1991).

The Court should grant the United States, motion for summary judgment in this case because no reasonable jury could return a verdict in favor of Karyn DEGEN with respect to her claims on the defendant properties.

B. The Government Is Required To Show Probable Cause.

The United States is seeking to forfeit the defendant properties under the authority of 21 U.S.C. § 881(a)(6). The pertinent part of 21 U.S.C. § 881(a)(6) states:

- (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

* * *

- (6) . . . all proceeds traceable to . . . [a controlled substance] exchange

The United States is also seeking to forfeit the real property located at 6668 West Lake Boulevard, Tahoma, California (Exhibit J to complaint) under the authority of 21 U.S.C. § 881(a)(7). The pertinent part of 21 U.S.C. § 881(a)(7) states:

- (a) [T]he following shall be subject to forfeiture to the United States and no property right shall exist in them:

* * *

- (7) All real property . . . and any such appurtenances or improvements, which is used, in any manner or part, to commit, or to facilitate the commission of, a violation of . . . punishable by more than one year's imprisonment . . .

Forfeiture statutes such as 21 U.S.C. § 881 which incorporate 19 U.S.C. § 1615 require the government to show probable cause that the property subject to the forfeiture is within the reach of 21 U.S.C. § 881(a)(6) or (7).

The defendant properties (real and personal) are subject to forfeiture if any proceeds from controlled substance exchanges were used to purchase the properties, improve the properties, or to make payments on the properties. Likewise, those properties which were used, or were intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of 21 U.S.C. § 801 *et. seq.* are subject to forfeiture.

Probable cause is generally defined as a reasonable ground for belief of guilt, supported by less than *prima facie* proof but more than mere suspicion. Probable cause may be proved by using hearsay evidence or circumstantial evidence. Probable cause can be shown by an aggregate of facts. After the government has shown probable cause, the burden of proof shifts to the claimant (Karyn DEGEN) to show by preponderance of the evidence that the property was not involved in a drug violation or to refute the probable cause showing of the United States. If the claimant cannot refute the evidence of the United States, the showing of probable cause is sufficient to forfeit the property. If the claimant meets the preponderance of evidence burden of proof, then the United States of America may refute or rebut the claimant's evidence and secure forfeiture of the property. *United States v. 1985 Mercedes*, 917 F.2d 415, 419 (9th Cir. 1990); *United States v. Roth*, 912 F.2d 1131, 1134 (9th Cir. 1990); *United States v. Padilla*, 888 F.2d 642, 643 (9th Cir. 1989); *United States v. \$215,000 U.S. Currency*, 882 F.2d 417, 418-419 (9th Cir. 1989), *cert. denied*, ___ U.S. ___, 110 S.Ct. 3242 (1990); *United States v. One 1985 Cadillac Seville*, 866 F.2d 1142, 1146 (9th Cir. 1989); *United States v. United States Currency, \$83,310.78*, 851 F.2d 1231, 1235, (9th Cir. 1988); *United States v. \$5,644,540.00 In United States Currency*, 799 F.2d 1357, 1361-1362 (9th Cir. 1986); *United States v. 1982 Yukon Delta Houseboat*, 774 F.2d at 1434; *United States v. \$93,685.61 In United States Currency*, 730 F.2d 571, 572 (9th Cir.), *cert. denied*, 469 U.S. 831 (1984); *United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 447 (9th Cir. 1983), *cert. denied*, 464 U.S. 1071 (1984); *United States v. One 56-Foot Motor Yacht Named Tahuna*, 702 F.2d 1276, 1281-1282 and 1287 (9th Cir. 1983).

C. There Is No Genuine Issue As To Any Material Fact.

To grant summary judgment, the Court must determine "that there is no genuine issue as to any material fact." Rule

56(c) of the F.R. Civ. P. A fact issue is material only if it must be resolved to decide the motion. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248 ("[F]actual disputes that are irrelevant or unnecessary will not be counted [as material]."); *British Airways v. Boeing Co.*, 585 F.2d 946 (9th Cir. 1978), cert. denied, 440 U.S. 981, reh. denied, 441 U.S. 968 (1979).

A fact dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248; *Lindahl v. Air France*, 930 F.2d at 1436-37. If a motion for a directed verdict would be granted to the moving party at trial based on the evidence, then there is no genuine issue requiring a trial and summary judgment is required. *Anderson*, 477 U.S. at 252-255; *First National Bank v. Cities Service*, 391 U.S. at 288-289 (1968); *Southard v. Forbes, Inc.*, 588 F.2d 140, 145 (5th Cir. 1979); *Flying Diamond Corp. v. Pennaluna Co., Inc.*, 586 F.2d 707, 713 (9th Cir. 1978).

It is clear from the record before this Court that there are no genuine, material issues of fact requiring a trial.

The defendant properties were purchased with, or partially paid for with, proceeds from controlled substance exchanges in violation of 21 U.S.C. § 881(a)(6). With the exception of the "Koloa Self-Storage" property, all of the real property was purchased by Brian DEGEN before his marriage to Karyn DEGEN. Only the office complex property located at 3060 and 3080 North Lake Boulevard was transferred (partially) into Karyn DEGEN's name after the DEGEN'S marriage.¹ From 1969 through at least 1985, Brian DEGEN

¹ As noted above, the office complex property is owned one-half by Brian DEGEN as his separate property and the remaining one-half by Brian and Karyn DEGEN as husband and wife. Accordingly, the maximum interest of Karyn DEGEN is a one-

had no income other than through the illicit drug trafficking enterprise which he operated with great success. He used his mother, his friends, his Cayman Islands corporation, and his smuggling partners to conceal the extent of his wealth and the extent of his accumulated assets. Karyn DEGEN was aware of her husband's drug trafficking. The United States has demonstrated probable cause to believe that the defendant properties, and each of them, represent the proceeds of a largescale marijuana smuggling enterprise.

Karyn DEGEN may assert that she has acquired a "community property" interest in the defendant properties. Such an assertion has no relevance because Karyn DEGEN could not have acquired a community property interest which is superior to the United States' interest in any of the subject properties. Karyn DEGEN could not have acquired a community interest in the subject properties because her husband and the marital community never had a legitimate interest in the subject property. *United States v. 127 Shares of Stock in Paradigm Mfg.*, 758 F.Supp. 581, 584 (E.D. Cal. 1990). The drug proceeds (cash) were forfeited to the United States at the time of the illegal acts giving rise to the forfeiture (which was long before the DEGEN's marriage). 21 U.S.C., § 881(h); *Simons v. United States*, 541 F.2d 1351, 1352 (9th Cir. 1976). Those proceeds remained forfeited despite the subsequent change in the form of the proceeds (currency to real estate and other properties). Karyn DEGEN could not have, at any time, acquired a community property interest in such proceeds. *127 Shares of Stock*, 758 F.Supp. at 584. Accordingly, she may not assert any community property interest in the defendant properties. In addition to the defendant properties being forfeit to the United States as a consequence of their status as proceeds of drug trafficking, the United States has also established probable

fourth interest in the property. As discussed below, Karyn DEGEN has no interest in this property or in any other item of property.

cause to believe that the real property located at 6668 West Lake Boulevard, Tahoma, California was used, or was intended to be used to commit or to facilitate the commission of a violation of 21 U.S.C. § 801 *et. seq.* Accordingly, that property is also forfeit to the United States under the authority of 21 U.S.C. § 881(a)(7). The declarations provided herewith establish probable cause to believe that the 6668 West Lake Boulevard property was used to store cash generated by the drug trafficking enterprise (before and after the DEGEN's marriage) and was used as a meeting place for DEGEN's marijuana distributors. Karyn DEGEN can not claim any community property interest in said property because it was forfeit to the United States long before her marriage to Brian DEGEN.

It is submitted that there is no genuine issue as to a material fact with respect to the claims of Karyn DEGEN. It is also submitted that the United States would be entitled to a directed verdict with respect to the claims of Karyn DEGEN. Therefore, this Motion For Summary Judgment should be granted.

IV.

CONCLUSION

Based on the foregoing, the United States' motion for summary judgment should be granted because the United States is entitled to judgment as a matter of law.

Dated this 2nd day of December, 1992.

Respectfully submitted,

MONTE N. STEWART
United States Attorney

/s/ Greg Addington
GREG ADDINGTON
Assistant United States Attorney

UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

(Title Omitted in Printing)

DECLARATION OF MICHAEL McCREARY

December 2, 1992

I, Michael McCreary, declare as follows pursuant to 28 U.S.C., Section 1746:

1. I have been personally acquainted with Brian DEGEN since 1969.

2. From 1969 and throughout the early 1970's, I would receive regular allotments of Mexican marijuana from Brian DEGEN. I would routinely receive approximately one hundred pounds of marijuana which I would sell on behalf of Brian DEGEN and Ciro MANCUSO. Once I sold the 100 pound allotment, I would return to DEGEN's home and immediately obtain another allotment. I was aware that I was one of several distributors of the marijuana which was smuggled into the United States by Brian DEGEN and Ciro MANCUSO.

3. I would receive the marijuana for distribution from Brian DEGEN's residence in San Mateo, CA where he lived with his girlfriend (Cathy WILSON). Brian DEGEN later moved to a home in Belmont, CA.

4. During 1973, I visited Brian DEGEN's residence in Belmont, CA and observed approximately 1,000 pounds of marijuana stored in the garage.

5. From late Fall 1972 through the Spring of 1973, I received regular allotments of marijuana, ranging in size from 100-200 pounds, from Brian DEGEN. I again received similar allotments of marijuana from DEGEN during the 1973-74 season.

6. During 1972 and 1973, Brian DEGEN operated a Mexican furniture store in Palo Alto, CA called "World House." Brian DEGEN told me that the store was operated as a "front" for DEGEN's smuggling ventures. The store was to give the impression that DEGEN had a legitimate source of income. DEGEN advised me about the need for such a business and I eventually opened a business for a similar purpose.

7. I had no contact with Brian DEGEN between 1975 and 1979.

8. In early 1979, I visited Brian DEGEN in Sausalito, CA. I informed Brian DEGEN that I needed money and he informed me that he and Ciro MANCUSO were in possession of a load of Thai marijuana. In order to assist me, I was given one box (approximately 20 pounds) of marijuana free of charge.

9. In early 1980, I was informed that Thai marijuana was again available. I contacted Brian DEGEN at his home located at 6668 West Lake Boulevard in Tahoma, CA.

10. Brian DEGEN instructed me to meet him at a public storage facility (AAA Storage) in San Carlos, CA. At the storage unit, Brian DEGEN provided me with approximately 200 pounds of marijuana (10 boxes of 20 pounds each). I paid Brian DEGEN approximately \$24,000 per box for the marijuana which I then sold at a profit for myself. The ten (10) boxes of marijuana which I received was a small fraction of the boxes which I observed in the storage unit.

11. During the Spring of 1981, I was informed that Brian DEGEN and Ciro MANCUSO had acquired another load of Thai marijuana.

12. I received four separate allotments of the 1981 marijuana load. The total weight of the four allotments was approximately 480 pounds, divided into boxes of 20 pounds each.

13. I sold the allotments of marijuana and paid Brian DEGEN throughout the sales process. Upon completion of the sales of my allotments, I paid Brian DEGEN the additional sum of \$200,000 at Brian DEGEN's home at 6668 West Lake Boulevard, Tahoma, CA. I estimate that I paid Brian DEGEN in excess of \$500,000 as payment for the marijuana which I sold in 1981. I was aware that I was not the only person selling marijuana for Brian DEGEN and Ciro MANCUSO.

14. I did not participate in the distribution of Brian DEGEN's marijuana again until 1985.

15. In July, 1985, I was informed that a shipment of marijuana had recently arrived from Thailand.

16. On July, 3, 1985, I visited Brian DEGEN at his home on 6668 West Lake Boulevard in Tahoma, CA. Brian DEGEN confirmed that a shipment of Thai marijuana had arrived. Upon informing Brian DEGEN that I wished to participate in the distribution of the marijuana, I was instructed to meet Brian DEGEN at the Nut Tree Restaurant near Vacaville, CA.

17. I met Brian DEGEN at the Nut Tree Restaurant as instructed. Brian DEGEN and I followed a pickup truck which had been previously been loaded with 80 pounds of marijuana. After proceeding for a short distance along Highway 4, the pickup truck stopped and the 80 pounds of marijuana was transferred to my vehicle. Brian DEGEN

instructed me to sell the marijuana as quickly as possible and then contact him (DEGEN) to receive more.

18. I sold the 80 pounds of marijuana in July, 1985. I then contacted Brian DEGEN at his home in Tahoma, CA to arrange for the delivery of additional marijuana. The following day, I again met Brian DEGEN at the Nut Tree Restaurant and received 200 pounds of marijuana. I paid Brian DEGEN for the marijuana which I had previously distributed.

19. Over the next two weeks, I made four additional trips to the Nut Tree Restaurant and each time received 200 pounds of marijuana from Brian DEGEN.

20. By the end of July, 1985, I had distributed approximately 1,000 pounds of marijuana and delivered to Brian DEGEN the sum of approximately \$1.3 million.

21. In late 1985, I attended a party at Brian DEGEN's home in Tahoma, CA. Brian DEGEN informed me that he had been particularly generous to me in 1985 regarding my allotments of marijuana because I had been excluded from receiving marijuana in the previous years.

22. After my involvement with the 1985 load, I did not participate in any further distribution of Brian DEGEN's marijuana.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Nov. 30, 1992

/s/ Michael McCreary
Michael McCreary

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

DECLARATION OF CATHERINE BRYANT

December 2, 1992

I, Catherine Bryant, declare as follows pursuant to 28 U.S.C., Section 1746:

1. I met and began dating Brian DEGEN in 1969. At that time, my name was Catherine (Cathy) Wilson and I was attending High School at South Tahoe High School. Brian DEGEN was attending college at Tahoe Paradise College.

2. Through my relationship with Brian DEGEN, I became acquainted with Ciro MANCUSO, Michael McCREARY, Luxana PHAKSWAN, James Bradley STOCKMAN, and Jeffrey WELCH.

3. During the Summer of 1970, I accompanied Brian DEGEN and Ciro MANCUSO on a trip to Europe. Carol GRIFFITHS, Ciro MANCUSO's girlfriend, also accompanied us on the early portion of the trip and then returned to the United States. The itinerary for the trip included Frankfurt, Germany, Marbella, Spain, and Morocco.

4. Upon our arrival in Germany, Brian DEGEN and Ciro MANCUSO purchased two Volkswagen buses which we used for transportation.

5. During our stay in Marbella, Spain, I became aware that Brian DEGEN and Ciro MANCUSO intended to acquire a quantity of hashish while on the trip.

6. Brian DEGEN, Ciro MANCUSO, and I proceeded to Fez, Morocco where we met an unidentified individual who led us to a remote location in the mountains. While there, Brian DEGEN and Ciro MANCUSO acquired an unknown quantity of hashish which was later hidden in the Volkswagen buses.

7. After acquiring the hashish, Brian DEGEN and I proceeded to Zurich, Switzerland and the home of Gret HUBER, the aunt of Brian DEGEN.

8. Brian DEGEN placed the hashish in suitcases and then concealed the suitcases in the attic of Gret HUBER's Zurich home.

9. After concealing the hashish in Gret HUBER's home, Brian DEGEN and I continued our European tour. We returned to Zurich in late Summer and retrieved the hashish from Gret HUBER's home.

10. After retrieving the hashish, Brian DEGEN concealed the hashish in a Volkswagen bus and the bus was then shipped to the United States.

11. From 1971 through 1973, Brian DEGEN and I were living in Los Altos, CA and then in Belmont, CA. I was aware that Ciro MANCUSO was living in Mexico at that time. I was aware that Brian DEGEN and Ciro MANCUSO were partners in importing and distributing marijuana from Mexico.

12. From 1971 through 1973, I was aware that Brian DEGEN and Ciro MANCUSO were using specially constructed travel trailers, modified by Luxana PHAKSWAN, to smuggle shipments of marijuana from Mexico into the United States. Luxana PHAKSWAN was a

Thai foreign exchange student who lived with Brian DEGEN and me from time to time.

13. From 1971 through 1973, Brian DEGEN operated a small shop called "World House" or "World Imports" which did little if any legitimate business.

14. In 1975, Brian DEGEN purchased a residence on West Lake Boulevard in Tahoma, CA from Max Hoff (now deceased). The property included approximately 120 feet of lake frontage. Brian DEGEN constructed a new residence on the property.

15. After the purchase of the West Lake Boulevard property, I would occasionally make a payment, which I believed to be a mortgage payment, at a Tahoe City bank on behalf of Brian DEGEN.

16. In Late 1976 or early 1977, I accompanied Brian DEGEN on a trip through Frankfurt, Germany and Kenya, Africa, eventually arriving in Pattaya Beach, Thailand. While we were in Pattaya Beach, Thailand, we stayed with Luxana PHAKSWAN. It was my understanding that our visit to Thailand was related to the acquisition of a shipment of Thai marijuana.

17. My relationship with Brian DEGEN terminated in the Fall of 1978.

18. During the entire time I spent with Brian DEGEN after the 1970 Morocco trip (1970-1978), I understood that Brian DEGEN and Ciro MANCUSO were partners in a drug trafficking enterprise. I was instructed by Brian DEGEN to not use credit cards or bank accounts. Nearly all of our living expenses were paid with cash or money orders.

19. During the entire time I spent with Brian DEGEN (1969-1978), he did not engage in any type of legitimate business. Although Brian DEGEN had a building license, I never knew of any building services performed by Brian DEGEN for anyone other than himself. I recall that he built

two "spec" homes on property which he owned on Interlaken Road, Tahoe Swiss Village.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 25, 1992

/s/ Catherine Bryant

Catherine Bryant

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

DECLARATION OF CIRO WAYNE MANCUSO

December 2, 1992

I, Ciro Wayne Mancuso, declare as follows pursuant to 28 U.S.C., Section 1746:

1. I have known Brian DEGEN since the Spring of 1967. Brian DEGEN and I had a common interest in skiing and we established a continuing friendship.

2. In the Fall of 1967, I enrolled at Tahoe Paradise College in South Lake Tahoe, CA. Brian DEGEN and I rented a home in Myers, CA.

3. During the summer of 1969, Brian DEGEN and I were told by friends that marijuana was growing wild in parts of Kansas and that other acquaintances were harvesting the marijuana.

4. Brian DEGEN and I, along with Greg DORLAND, flew to Denver, CO and rented a vehicle. We drove to Kansas and Nebraska and harvested marijuana which we found growing wild. We then returned to South Lake Tahoe and sold the marijuana. A subsequent trip in the summer of 1969 was conducted in like fashion.

5. During the second trip to Kansas, Brian DEGEN, Greg DORLAND, and I were stopped and questioned by the Cloud County (Kansas) Sheriff.

6. A third trip to Kansas in the summer of 1969 was conducted. Brian DEGEN, Greg DORLAND, and I harvested the wild marijuana and transported it back to South Lake Tahoe in a U-Haul trailer.

7. Brian DEGEN and I each realized a profit of approximately \$7,000 from the three trips to Kansas.

8. During the Fall of 1969, Brian DEGEN and I were introduced to Robert CLARKE, an individual who was involved in smuggling Mexican marijuana into California. After Brian DEGEN and I assisted CLARKE by distributing his smuggled marijuana, we (Brian DEGEN and I) became partners with CLARKE and were introduced to CLARKE's Mexican contacts for marijuana.

9. CLARKE, DEGEN, and I agreed upon a division of responsibilities in which Brian DEGEN would be responsible for the off-loading of the marijuana from aircraft, the transport of the marijuana to DEGEN's residence in the San Francisco Bay Area, the processing and weighing of the marijuana, and the distribution of the marijuana. I was responsible for assisting CLARKE with the loading of the aircraft in Mexico and the transport of the marijuana through Mexico into the United States.

10. From the Fall of 1969 through the Spring of 1970, Brian DEGEN and I participated in five or six smuggling operations. Marijuana was loaded on to rented airplanes near Puerto Vallarta, Mexico and flown to a dry lake-bed near Kingman, AZ. The aircraft was flown by William PEARCE. Upon arrival in Arizona, the aircraft was met by Brian DEGEN and others (including James STOCKMAN and Jeff WELCH) and the marijuana was unloaded. The marijuana was then transported to the South Bay Area for distribution. Brian DEGEN was responsible for maintaining all records regarding the marijuana which was distributed.

11. The smuggling operations described in paragraph ten yielded profits to Brian DEGEN and me of approximately \$25,000 to \$30,000 for each of us.

12. During the Summer of 1970, Brian DEGEN and I became interested in smuggling hashish from Morocco. We had learned of a successful smuggling venture using hidden compartments built into Volkswagen buses and trailers.

13. Following the conclusion of the school year in the summer of 1970, Brian DEGEN and I planned a tour of Europe combined with a hashish smuggling operation.

14. Brian DEGEN and I, accompanied by our respective girlfriends, travelled to London in the summer of 1970. My girlfriend remained in London while Brian DEGEN and I, accompanied by DEGEN's girlfriend, continued to Stuttgart, Germany. In Germany, we purchased two Volkswagen vans for the purpose of travelling to Morocco and returning to Germany with hashish.

15. Brian DEGEN and I, accompanied by DEGEN's girlfriend (Cathy Wilson), proceeded through Marbella, Spain and into Fez, Morocco. Brian DEGEN and I proceeded, in a rental car, to a remote area outside Fez where we purchased approximately 300 pounds of hashish.

16. After purchasing the hashish, it was concealed within the two Volkswagen vans and transported to Zurich, Switzerland. The hashish was stored at the Zurich residence of Gret HUBER, DEGEN's aunt.

17. Approximately five weeks later, at the conclusion of our European tour, Brian DEGEN and I returned to Zurich and picked up the hashish which was being stored in HUBER's home. We drove to Bremenhoffen, Germany and from there shipped the two Volkswagen vans to Portland, Oregon by ocean freighter. Brian DEGEN and I returned to the United States, retrieved the two vans in Portland, Oregon, and drove the two vans to California.

18. The hashish which was smuggled in the Volkswagen vans was sold. Brian DEGEN and I each realized a profit of approximately \$40,000 from this hashish smuggling operation.

19. In the Fall of 1970, Brian DEGEN and I ended our partnership with CLARKE. Brian DEGEN and I had been introduced to a foreign exchange student from Thailand (Luxana PHAKSWAN) who was employed in an auto body shop in Palo Alto, CA. Brian DEGEN and I were informed that PHAKSWAN was able to build hidden compartments in vehicles and trailers.

20. In the Fall of 1970 and continuing throughout 1971, Brian DEGEN and I utilized modified travel trailers to transport marijuana from Mexico into California. Brian DEGEN purchased a 20 foot travel trailer and supervised the modifications made by PHAKSWAN. I travelled to Mexico to arrange for the purchase of marijuana.

21. After the first modified travel trailer proved to be adequate, two additional trailers were purchased and similarly modified. The three trailers were driven down to Mexico by drivers arranged by Brian DEGEN. The trailers were then loaded with marijuana. The trailers were then driven back to the South Bay Area and unloaded by Brian DEGEN. He (DEGEN) was responsible for distribution of the marijuana.

22. In order to expedite the delivery of the marijuana and save wear and tear on the trailers, marijuana was occasionally transported to northern Mexico in pickup trucks and then loaded on to the trailers for the border crossing. Once across the border, the trailers would be unloaded by Brian DEGEN into pickup trucks and transported to the South Bay Area.

23. During 1971, Brian DEGEN and I each realized a profit of \$60,000 to \$70,000 from the marijuana smuggling operation.

24. I was arrested in Mexico in February, 1972. While I was in jail, Brian DEGEN continued to send trailers to Mexico to be loaded by STOCKMAN and WELCH. There were 6-7 trailer loads in 1972. The marijuana was sold by Brian DEGEN and we each realized approximately \$60,000 to \$90,000 during 1972. I was released from jail in February, 1973 and continued to live in Guadalajara, Mexico.

25. Throughout 1973, Brian DEGEN had two separate marijuana smuggling operations. One operation was the continuing use of the modified travel trailers, which were continually sent down to me in Mexico to be loaded with marijuana and then returned to Brian DEGEN for unloading and distribution of marijuana. During 1973, Brian DEGEN made approximately \$100,000 through this "trailer" operation which was conducted in partnership with me. The second operation was the use of a boat, the S/V Nepenthe, to transport marijuana from Playa Azul, Michoacan, Mexico to California. In the Spring of 1973, I assisted in the loading of approximately one ton of marijuana on to the S/V Nepenthe, which was then sailed to California, off-loaded, and the marijuana sold by Brian DEGEN and others. I do not know how much was earned by Brian DEGEN in 1973 as a result of the boat loads.

26. In July, 1973, Brian DEGEN purchased a home on Alma Way in Zephyr Heights, Nevada. Brian DEGEN had no legitimate employment and no source of income other than marijuana smuggling. Brian DEGEN informed me that he was using his mother's name, Violet (a/k/a Mary) DEGEN, for the title to the property in order to hide the fact that Brian DEGEN had furnished the funds for the purchase.

27. Brian DEGEN maintained a storefront business in Palo Alto, CA called "World House." This business was used as a "front" for the marijuana smuggling operations.

28. Brian DEGEN informed me that, on numerous occasions, he (DEGEN) would bring his marijuana cash

proceeds to his mother's house in Carmichael, CA for safekeeping.

29. I decided to leave Mexico in early 1974. Before I left, Brian DEGEN and I completed 3-4 trailer loads of marijuana into California, which marijuana was sold by Brian DEGEN and the proceeds divided. Each trailer load consisted of 400-500 pounds of marijuana.

30. Following my return to the United States, PHAKSWAN urged Brian DEGEN and I to go to Thailand and obtain a better grade of marijuana for smuggling. PHAKSWAN had been living with Brian DEGEN at a home DEGEN had rented on Ralston Avenue in San Mateo, CA.

31. In July, 1975, PHAKSWAN participated in the smuggling of one metric ton of marijuana from Thailand to San Francisco Bay. Brian DEGEN and I purchased approximately 1,000 pounds of the Thai marijuana and sold the marijuana for a profit of approximately \$50,000 each.

32. Brian DEGEN purchased an Airstream travel trailer and hired PHAKSWAN to build hidden compartments for a hashish smuggling operation from Morocco. Brian DEGEN shipped the travel trailer to La Havre, France and arranged for the drivers to pull the trailer. Brian DEGEN and I then met the drivers in Geneva, Switzerland. The trailer was retrieved in France and driven to Morocco. Approximately 1,100 pounds of hashish were loaded on to the trailer and the trailer was transported by ferry boat to Lisbon, Portugal. The trailer was then shipped to Vera Cruz, Mexico where the trailer was delivered to Brian DEGEN and me. The hashish was then transferred to a Kenskill travel trailer which had been used previously to smuggle marijuana. A driver was hired to transport the loaded trailer across the border where it was delivered to Brian DEGEN and me.

33. The hashish was taken to Brian DEGEN's home in San Mateo, CA where it was processed for sale. Brian

DEGEN and I each realized a profit of approximately \$100,000 from the hashish operation in 1975.

34. In 1975, Brian DEGEN purchased a partially framed house on West Lake Boulevard in Tahoma, CA from Max Hoff. Brian DEGEN informed me that he had given Hoff cash "under the table" for the purchase.

35. In late summer, 1975, Brian DEGEN and I decided to attempt to smuggle a load of marijuana from Thailand using modified travel trailers.

36. Brian DEGEN arranged for the purchase of a Boles Aero travel trailer and hired William ARENDS to make alterations to the trailer. A shop space was rented near Freeport Boulevard in Sparks, Nevada so that ARENDS and his father, William NIDAY, could work on the trailer. The Airstream trailer which was previously used in the Morocco trip was also repaired by ARENDS and NIDAY.

37. Brian DEGEN and I negotiated the purchase of the Thai marijuana from PHAKSWAN and others.

38. Once the Boles Aero trailer was completed, Brian DEGEN arranged for the shipment of the Boles Aero trailer to Singapore in early 1976 (January or February).

39. In early 1976, Brian DEGEN also shipped the Airstream trailer to La Havre, France for another load of hashish from Morocco. The Airstream trailer was driven to Morocco and loaded with hashish. In April, 1976, the trailer was intercepted by French authorities and the drivers arrested.

40. I travelled to Bangkok, Thailand in early 1976 in order to arrange for the loading of the Boles Aero trailer which was being driven to Thailand from Singapore. While I was awaiting the arrival of the Boles Aero trailer, PHAKSWAN and others were preparing another load of marijuana to be smuggled on the S/V Nepenthe.

41. In April, 1976, Brian DEGEN and William ARENDS arrived in Thailand to assist in the loading of the marijuana into the Boles Aero trailer. The trailer was then driven through Thailand and into Singapore. The trailer was then shipped to Japan and on to Vancouver, Canada. The trailer was retrieved in Vancouver by a driver and driven to Sacramento, CA. The driver was met by Brian DEGEN and me at the Eppie's Coffee Shop west of Sacramento off Interstate 80.

42. Brian DEGEN and I led the driver to the residence of James STOCKMAN in Grass Valley, CA. At STOCKMAN's residence, the marijuana was unloaded by Brian DEGEN, James STOCKMAN, William ARENDS, Jeff WELCH, and me. After processing, the marijuana was taken to Brian DEGEN's home in San Mateo, CA and thereafter sold.

43. Brian DEGEN and I each made a profit of \$350,000 from the 1976 trailer load from Thailand.

44. In July, 1976, the S/V Nepenthe arrived in San Francisco Bay with a load of Thai marijuana. Brian DEGEN and I purchased 1,000 pounds of the marijuana and sold it for a profit of \$50,000 each.

45. As a result of the successful smuggling of the trailer load from Thailand and the successful smuggling venture of the S/V Nepenthe, Brian DEGEN and I agreed to locate and purchase a sailing vessel to be used the following year.

46. Brian DEGEN and I learned of the availability of an experienced captain and made arrangements for him to assist in the purchase of a suitable boat. Marcus ZYBACH arrived in San Francisco where he was met by Brian DEGEN.

47. A suitable vessel was located in Newport Beach, CA and it was purchased through Marcus ZYBACH's Cayman Islands corporation, CARIBE CRUISES, LTD. The name of the boat was "Drifter." After the "Drifter" was purchased,

Brian DEGEN, William ARENDS, and I began sailing the boat north to Oakland, CA. Brian DEGEN and I disembarked in San Luis Obispo, CA and the remainder of the crew proceeded to Oakland.

48. During the Fall of 1976, Brian DEGEN supervised the preparation of the "Drifter" for shipment to Singapore. The preparations included the dismantling of the mast and sailing structure and the construction of a "cradle" for the boat.

49. Once work was completed on the "Drifter," Brian DEGEN arranged for the shipment of the "Drifter" to Singapore via commercial freighter.

50. During the Fall of 1976, Brian DEGEN and I met with Richard TEGNER, whom I had met through an acquaintance in Mexico. Richard TEGNER informed Brian DEGEN and me that he was knowledgeable about boats and was familiar with the San Francisco Bay. Brian DEGEN, Richard TEGNER, and I toured the North Bay to identify possible off-load sites for the marijuana which would arrive on the "Drifter."

51. Brian DEGEN and I agreed to hire Richard TEGNER as a crew member on the "Drifter" to be joined by William ARENDS and Marcus ZYBACH.

52. During the Fall of 1976, Brian DEGEN purchased property on Interlaken Road near Tahoe City, CA. A speculation house was built on the property by Brian DEGEN using cash realized from the smuggling ventures. The house was sold in 1977.

53. In January, 1977, I travelled to Bangkok, Thailand and assisted in the packaging of the marijuana which would be loaded on to the "Drifter." I returned to the United States and met with Marcus ZYBACH who had arrived from the Caribbean. Marcus ZYBACH and I travelled together to Bangkok, Thailand and ZYBACH was shown the area where

the "Drifter" was to be loaded. ZYBACH then flew to Singapore where he met with Brian DEGEN and the other crew members.

54. In March, 1977, the "Drifter" arrived in Pattaya Bay, Thailand where I was waiting to assist in the loading of the marijuana. The following night, the "Drifter" was loaded with marijuana. I then joined Brian DEGEN and his girlfriend in Europe for a short vacation before returning to the United States in April, 1977.

55. The "Drifter" required approximately 70 days to arrive in San Francisco Bay from Thailand. Brian DEGEN rented a home in Sausalito, CA while making final arrangements for the off-loading and processing of the marijuana.

56. In early June, 1977, the "Drifter" arrived at Angel Island near Tiburon, CA. Brian DEGEN was contacted at his Sausalito home by Marcus ZYBACH and I was contacted by Brian DEGEN.

57. The "Drifter" was met at Angel Island by Brian DEGEN and others who were using a Sea Ray boat belonging to Jeff WELCH. The "Drifter" was then led to North Bay where one-half of the load was transferred to the Sea Ray boat. The Sea Ray boat was then loaded on to its trailer and driven to the Healdsburg, CA residence of Jeff WELCH. The process was repeated for the second half of the load. I arrived at the Petaluma Marina as the off-loading was being completed.

58. Brian DEGEN, James STOCKMAN, Jeff WELCH, and I processed and packaged the marijuana at the Healdsburg, CA residence. The total weight of the "Drifter" marijuana was 2,200 pounds. After the marijuana was packaged, it was transferred to storage garages rented by Brian DEGEN in San Rafael, CA and San Mateo, CA.

59. Over the following four weeks, the marijuana was sold by Brian DEGEN and me. The net profit (after expenses) to Brian DEGEN and me was approximately \$1,140,000 each.

60. Following the off-load of the "Drifter," it was to have been taken to Richmond, CA for repairs. The boat was stopped and searched by the Coast Guard. Several pounds of marijuana were found on board and Richard TEGNER was arrested.

61. Brian DEGEN delivered \$200,000 to Marcus ZYBACH and they discussed the possibility of another smuggling venture the following year. It was agreed that ZYBACH would be a one-third partner if he could purchase the appropriate boat and handle the ocean transportation of the marijuana from Thailand.

62. In late 1977 (November or December), I was informed by Brian DEGEN that Marcus ZYBACH had purchased a boat, the MV SKOMER, in England and that he (ZYBACH) was preparing to sail the vessel to Singapore.

63. Brian DEGEN and I began negotiating with PHAKSWAN for the supplying of a load of marijuana. Those negotiations were not fruitful because PHAKSWAN and his partners demanded one-half of the gross load for their participation. Brian DEGEN and I decided that the proposed arrangement was unfair and we began looking for another source of supply.

64. Brian DEGEN and I were unable to secure a source of supply for the 1978 marijuana season. We continued our efforts to secure a source of supply for the 1979 season.

65. During the summer of 1978, Brian DEGEN and I concluded negotiations with the crew which would handle the off-loading of the anticipated marijuana load to be transported on the M/V Skomer.

66. During the Summer of 1978, William Arends quit-claimed to Brian DEGEN a parcel of property on Interlaken Road in Tahoe Swiss Village. The property had been purchased in the name of ARENDS to hide the fact that Brian DEGEN owned it. A home was built on the property with the proceeds of marijuana sales. The property was sold in 1978.

67. During the Fall of 1978, Brian DEGEN purchased property in Incline Village Nevada on Tomahawk Trail. The property was purchased in partnership with Reuben Hills, IV. A duplex was constructed on the property. Brian DEGEN paid for his share of the acquisition of the property and the construction of the duplex with proceeds from marijuana sales.

68. In early 1979, property on Benjamin Court in Stateline, Nevada was quit-claimed to Brian DEGEN from James PHELPS. Brian DEGEN had previously given PHELPS the money with which to purchase the property and the property was placed in PHELPS' name.

69. Brian DEGEN travelled to Singapore in early 1979 to deliver the money for the purchase of the 1979 load of marijuana. While in Singapore, Brian DEGEN met with Marcus ZYBACH and stayed at the Merlin Hotel. Marcus ZYBACH thereafter proceeded to Phuket Island in Thailand to await the loading of the marijuana on the M/V Skomer.

70. Brian DEGEN then proceeded via commercial airline to Bangkok, Thailand and drove to Phuket to meet Marcus ZYBACH for a briefing on the loading location and procedure.

71. Brian DEGEN then left Phuket and proceeded back to Bangkok to supervise the loading of the marijuana on to the M/V Skomer. The boat was loaded with marijuana near Ko Lan Island in Pattaya Bay. Once loaded, Marcus ZYBACH departed on the voyage to California.

72. In April, 1979, Brian DEGEN returned to California and informed me of the successful loading of the M/V Skomer.

73. Brian DEGEN hired William PEARCE to arrange for the rental of a home near Fairfield, CA to be used for the processing and packaging of the off-loaded marijuana.

74. Approximately 70 days after the M/V Skomer left Thailand, radio contact was established with Marcus ZYBACH aboard the vessel. At that time, the vessel was approximately five days away from the pre-established rendezvous point with the off-loaders.

75. The off-loading crew proceeded to the pre-arranged loran coordinates west of San Francisco, CA to exchange the marijuana from the M/V Skomer to the M/V Sancho Panza.

76. Once the open ocean exchange was made to the M/V Sancho Panza, the M/V Skomer proceeded to Ensenada, Mexico and later cleared customs at Terminal Island. The M/V Skomer later was transferred to Florida and the Caribbean by Marcus ZYBACH.

77. The M/V Sancho Panza, with the load of marijuana, motored into San Francisco Bay and up the Sacramento River to an area near Sutter Slough. The marijuana was transferred to pickup trucks and transported to the rented house near Fairfield, CA.

78. The marijuana was processed by Brian DEGEN and me, as well as others, at the Fairfield, CA house. The packaged marijuana was stored at the Fairfield, CA house during the next several weeks while the marijuana was being sold.

79. The sales of the marijuana which was transported on the M/V Skomer in 1979 yielded a profit which was split three ways among Brian DEGEN, Marcus ZYBACH, and myself. Each share was approximately \$1,480,000.

80. In the summer of 1979, Brian DEGEN purchased commercial property on North Lake Boulevard near Lake Forest, CA. Brian DEGEN later built an office building on the property using the cash proceeds from the sale of marijuana to acquire and improve the property.

81. In the summer of 1979, Brian DEGEN acquired property from Dennis MARR on Alder Court, Incline Village, Nevada. Brian DEGEN built a tri-plex on the property using cash proceeds from the sale of marijuana to acquire and improve the property.

82. In late 1979, Brian DEGEN and I decided to purchase commercial property located at West Lake Boulevard and Sans Souci Terrace in Homewood, CA. The property was owned by Lawrence HELM (who was a friend of Max Hoff).

83. Brian DEGEN had earlier purchased his lakefront home from Max HOFF and had paid HOFF part of the purchase price in cash outside of escrow. HOFF arranged with HELM for a similar payment of cash outside of escrow for the purchase of the Homewood commercial property. The purchase price of the lot was \$100,000. The sum of \$60,000 was paid through escrow at Western Title Insurance Company. The balance was paid in cash. I gave my share of the balance (\$20,000) to Brian DEGEN who gave the entire \$40,000 to HELM through HOFF.

84. Brian DEGEN subsequently purchased another lot from Max HOFF which was adjacent to his lakefront home. Brian DEGEN informed me that he had again paid a portion of the purchase price in-cash outside of escrow.

85. I am aware that Brian DEGEN routinely kept large sums of cash generated by sales of marijuana in the wine cellar at his residence on West Lake Boulevard in Tahoma, CA. Brian DEGEN also kept cash from marijuana proceeds in a rented garage in Redwood, City, CA. Brian DEGEN

also informed me that he had left cash proceeds from the sale of marijuana at the home of his mother in Carmichael, CA.

86. In the Fall of 1979, Marcus ZYBACH informed Brian DEGEN and me of the procedures for ownership of corporations in the Cayman Islands. ZYBACH had previously purchased two condominiums from me and taken title to the properties in the name of his Cayman Islands corporation, Kaleidoscope, Inc. ZYBACH also informed Brian DEGEN and me of how cash could be deposited in the banks of the Cayman Islands with no questions asked regarding the origins of the cash.

87. ZYBACH thereafter purchased two condominiums from Brian DEGEN located at South Benjamin Court in Stateline, Nevada. The purchase was made in the name of Kaleidoscope, Inc. and was the same property which had earlier been quit-claimed to Brian DEGEN by James PHELPS.

88. Brian DEGEN was introduced to a friend of Marcus ZYBACH who indicated a desire and willingness to participate in another load of marijuana in 1980. This individual owned a large fishing trawler named the M/V Restless Metaloch.

89. In February, 1980, Brian DEGEN and I travelled to Singapore and met with Marcus ZYBACH and the owner of the M/V Restless Metaloch. The boat was at that time being prepared to depart for Thailand to pick up a load of marijuana.

90. While in Singapore, Brian DEGEN and I learned that the owner of the M/V Restless Metaloch no longer wished to participate in the marijuana smuggling venture. Marcus ZYBACH then negotiated the purchase of the M/V Restless Metaloch for the sum of \$500,000. The name of the boat was changed to the Restless M.

91. After consulting with the new crew of the Restless M. regarding the location for the loading of the marijuana, the boat and crew departed for Thailand.

92. Once the M/V Restless M. was successfully loaded, Marcus ZYBACH informed Brian DEGEN by telephone that the load was on its way to the United States.

93. Brian DEGEN located a house in Vacaville, CA which was suitable for the processing and packaging of the load which was in transit on the M/V Restless M. Brian DEGEN provided funds for the rental of the house, which was rented by William PEARCE. The house was later purchased by PEARCE in the name of Pasquaro, Investments, a Cayman Islands corporation.

94. When the off-loading crew was informed that the M/V Restless M. was nearing the pre-arranged off-loading site, the off-loading crew proceeded out to meet the M/V Restless M. in the M/V Bell.

95. Following the open ocean transfer of the marijuana to the M/V Bell, the off-loading crew transported the marijuana to the Vacaville, CA house. The marijuana was processed and packaged by Brian DEGEN, myself, and others. The marijuana was then sold.

96. The gross sales of the 1980 load of marijuana was \$7,120,000. The net profit of \$4,010,000 was split equally between Brian DEGEN, Marcus ZYBACH, and me.

97. During the Summer of 1980, while the 1980 load was being sold, Brian DEGEN and I, together with Karyn PETERSEN (now Karyn DEGEN), socialized and dined with Marcus ZYBACH. Our successful smuggling ventures were discussed freely among all those present.

98. In late Summer, 1980, Brian DEGEN and I each purchased separate offshore corporations in the Cayman Islands. I purchased Keystone Investments, Ltd. Brian DEGEN purchased KES Corporation. Brian DEGEN and I

thereafter deposited our respective cash proceeds from marijuana sales into the corporate accounts in the Cayman Islands. The cash was transported to the Cayman Islands by private aircraft.

99. In January, 1981, Brian DEGEN purchased oceanfront property on Hoona Road near Poipu Beach, Koloa, Kauai, Hawaii. The purchase was made through Brian DEGEN's Cayman Islands corporation, KES. I informed Brian DEGEN of the opportunity to purchase the property. The purchase price for the property was paid from the sales of marijuana.

100. In early 1981, Brian DEGEN travelled to Bangkok, Thailand to meet with the Thai source of supply and to deliver money. Prior to departing for Thailand, Brian DEGEN married Karyn PETERSEN. Brian DEGEN and his wife thereafter proceeded to Singapore and met with Marcus ZYBACH and the crew of the M/V Restless M.

101. Once Brian DEGEN and Marcus ZYBACH were advised by the source of supply that the marijuana was ready for loading, the M/V Restless M. and crew proceeded to Bangkok, Thailand. Once the Restless M. was loaded and had departed for the United States, Brian DEGEN, Karyn DEGEN, and Marcus ZYBACH returned to the United States to await the arrival of the Restless M.

102. The Vacaville, CA house was modified to facilitate the processing and packaging of the 1981 load. The off-loading crew established contact with the M/V Restless M. and the marijuana was transported to the Vacaville, CA house.

103. The 1981 load was processed, packaged, and sold in the same manner as the 1979 and 1980 loads. The entire sales process took approximately 6 weeks. During the sales process, Brian DEGEN and I stayed at Marcus ZYBACH's home in Tiburon, CA. We were accompanied by my wife and Karyn DEGEN.

104. The sale of the 1981 load of marijuana yielded a net profit of approximately \$4,511,090, which amount was split equally between Brian DEGEN, Marcus ZYBACH, and me.

105. In August, 1981, Brian DEGEN arranged for the deposit of approximately \$500,000 in cash into the bank account of his Cayman Islands corporation. The cash was transported to the Cayman Islands by private aircraft.

106. Brian DEGEN, Marcus ZYBACH, and I had decided to stop our smuggling operation after the 1981 load.

107. In early 1983, I learned that the banking laws in the Cayman Islands were being changed and that it was advisable to remove the marijuana proceeds from the accounts there.

108. I informed Brian DEGEN of the anticipated change in the banking laws. Brian DEGEN informed me that he had previously started moving his money to Switzerland.

109. I am informed by Marcus ZYBACH that Brian DEGEN participated with Marcus ZYBACH in a smuggling venture utilizing the M/V Skomer in 1985. I am informed that the amount of marijuana smuggled in 1985 was the same amount as in previous years (approximately 3.5 tons).

110. In late 1986 (October or November), I met with Brian DEGEN and discussed with him the recent arrest of James VALLIER. In March, 1987, I again met with Brian and Karyn DEGEN and discussed the ramifications of James VALLIER'S arrest. Brian DEGEN informed me at that time that he was seriously considering leaving the United States and pursuing his Swiss citizenship to avoid further problems in the United States.

111. Through the remainder of 1987 and into 1988, Brian DEGEN continued to communicate regarding the continuing investigations of our activities. In October, 1988, I received a call from Brian DEGEN and I met him in the

parking lot of the Squaw Valley Ski Resort. Brian DEGEN informed me that he was leaving the United States and was moving to a home in Verbier, Switzerland. Brian DEGEN stated that he believed he would be safe from prosecution in Switzerland.

112. In June, 1989, I travelled to Verbier, Switzerland and met with Brian and Karyn DEGEN. While there, we discussed the continuing investigation and the various people who had been questioned by the authorities. Brian DEGEN informed me that he had travelled to the Cayman Islands in April or May, 1989 and had obtained all of the records pertaining to KES Corporation. Brian DEGEN informed me that he had destroyed all such records. Brian DEGEN informed me that he intended to claim that he had no connection with the KES or the Hawaii property owned by KES.

113. During the entire time of my association with Brian DEGEN, he has had no source of income other than the sales of marijuana and the purchase and sale of properties financed with the proceeds of marijuana sales. I declare under penalty of perjury that the foregoing is true and correct.

Date: November 30, 1992

/s/ Ciro Wayne Mancuso
CIRO WAYNE MANCUSO

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

AFFIDAVIT OF DANIEL W. STEWART IN SUPPORT
OF CLAIMANTS MOTION TO EXTEND THE
MOTIONS DEADLINE (Eighth Request) AND
TO EXTEND THE TIME TO RESPOND TO
THE GOVERNMENT'S MOTION FOR
SUMMARY JUDGMENT (Second Request)

January 6, 1993

Daniel W. Stewart, being first duly sworn deposes and says:

1. That he is co-counsel with Mr. Frederick Pinkerton in the representation of the Claimants in this case.
2. That he is informed by Pierre de Preux and Brian Degen that Mr. de Preux has been retained by Brian Degen with regard to the criminal matter pending in Switzerland related to the present civil action.
3. Your affiant is informed by Mr. de Preux that the United States Government filed papers with the magistrate in Verbier Switzerland in March of 1990, bringing to his attention the criminal matter which relates to this civil case.
4. In conjunction with the inquiry by the magistrate at that time, Mr. Degen's Swiss counsel, Pierre de Preux, notified the magistrate of both his address and the address of

his client, Brian Degen, stating that Mr. Degen would be available and would await the pleasure of the Court.

5. The magistrate declined to proceed or to call Mr. Degen in for questioning at that time.

6. In March of 1992, Mr. de Preux informs your affiant, the United States Government sent a letter to the magistrate saying, essentially, that the Swiss Government needed to bring a criminal action against Brian Degen because it anticipated that it would lose the civil forfeiture case against him in the United States.

7. In a telephone conversation with Greg Addington in September of 1992, your affiant and Mr. Addington agreed to stipulate to extend the motions deadline through December 7, 1992, to allow the filing of motions which each of them felt would be dispositive of the case in his respective client's favor.

8. Your affiant prepared a proposed stipulation and order to extend the motions deadline through December 7, 1992, executed it and had it executed by Mr. Pinkerton and delivered it to Mr. Addington's office to be signed by him and filed with the clerk. Mr. Addington has informed you affiant that this was done.

9. Your affiant is informed by Karyn Degen that on November 19, 1992, 20 days before the expiration of the motions deadline, Swiss police arrived unannounced and took Mr. Degen to prison where he was held incommunicado. He was not allowed reading material, visits from his wife or his attorney or access to any sort of entertainment media.

10. Your affiant is informed that Brian Degen was allowed to talk to his criminal defense attorney beginning December 19, 1992, but he is still unable to receive any sort of documentation from his wife, Karyn Degen.

11. Your affiant is informed by Mr. de Preux that the detention of Brian Degen without charges is in violation of Swiss Law.

12. Your affiant has discussed the civil forfeiture case briefly with Mr. de Preux, whose native language is French, not English, and has grave doubts as to whether or not Mr. de Preux will be able to act adequately as an intermediary between counsel for the Claimants in this case and Brian Degen.

13. Your client came away from the conversation with Mr. Addington relating to the sealing of the file containing the factual allegations which support the government's Motion For Summary Judgment with the impression that secrecy in the matter was required only temporarily and the Claimants could be informed of the basis for the government's motion when the need for secrecy had passed.

/s/ Daniel W. Stewart

Daniel W. Stewart

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

(Title Omitted in Printing)

UNITED STATES' MEMORANDUM OF LAW IN
OPPOSITION TO: (1) CLAIMANT'S MOTION
TO EXTEND MOTIONS DEADLINE AND
(2) CLAIMANT'S MOTION FOR ADDITIONAL
TIME TO RESPOND TO UNITED STATES'
DISPOSITIVE MOTION

February 2, 1993

Comes now the United States of America, through its undersigned counsel, and submits the following memorandum of law in opposition to the dual motion filed by claimant Karyn Degen. Claimant's motion seeks an extension of the motions deadline which expired on December 7, 1992 and also seeks an extension of the time permitted to respond to the United States' Motion for Summary Judgment.

I

INTRODUCTION

On December 2, 1992, the United States filed its Motion for Summary Judgment with supporting materials. The deadline for the filing of such motions, extended several times by mutual consent of the parties, was December 7, 1992.

The motion of the United States merely seeks to obtain adjudication of the claims of the sole remaining claimant; namely, Karyn DEGEN. The claims of Brian DEGEN have

already been adjudicated by this Court and his interest in the defendant properties has been forfeit to the United States.

The present motion is purportedly made on behalf of the "claimants" Brian DEGEN and Karyn DEGEN despite this Court's previous ruling that Brian DEGEN has no standing to appear in this action as a claimant. As used in this memorandum "claimant" refers to the only claimant remaining in this case (Karyn DEGEN).

Claimant's motion seeks yet another extension of the long-expired deadline for the filing of dispositive motions (a deadline which the United States complied with) and also seeks an extension of the deadline for responding to the United States' Motion for Summary Judgment (which deadline has already been extended once).

For the reasons discussed below, both components of claimant's motion should be denied.

II

ARGUMENT

A. Claimant Has Failed to Comply With This Court's Local Rules.

As noted above, the deadline for the filing of dispositive motions was extended *seven* times by mutual consent of the parties. The last deadline agreed by the parties was December 7, 1992. Claimant did not file her motion to extend the motions deadline until one month *after* the deadline had expired. Such a practice is contrary to the clear directive of Local Rule 150, which requires such motions be filed *prior* to the expiration of the deadline. No attempt is made by claimant or claimant's counsel to explain the failure to comply with Local Rule 150.¹ It is apparent that claimant

¹ The November 19, 1992 arrest and detention of Brian DEGEN by Swiss authorities provides no basis for the requested extension of the motions deadline or for the failure to comply with Local

sought an untimely extension of the motions deadline only after receiving the United States' (timely filed) Motion for Summary Judgment.

For this reason alone, claimant's motion to extend the motions deadline should be denied. Claimant has offered no explanation for her non-compliance with Local Rule 150. Additionally, the discussion below, focussing on the second component of claimant's motion, applies with equal force to claimant's motion to extend the motions deadline.

B. Claimant Has Provided No Factual Basis For the Requested Extensions.

In addition to seeking an extension of the motions deadline, claimant seeks an additional extension of time to respond to the United States' Motion for Summary Judgment. Counsel for the United States, as a courtesy, agreed to a 15-day extension of the usual time provided by Local Rule 140-4. Claimant now seeks an additional extension which would permit claimant over three months to respond to the United States' motion.

In support of claimant's motion to extend the deadlines, claimant's counsel has provided an affidavit which describes his understanding of the circumstances surrounding the arrest and detention of Brian DEGEN by Swiss authorities. The affidavit is little more than a literary flight of fancy

Rule 150. There is no suggestion that claimant's counsel was in the process of preparing a motion or that the arrest of Brian DEGEN interrupted the filing of an anticipated motion. Furthermore, the arrest of Brian DEGEN occurred more than two weeks prior to the motions deadline, providing Karyn DEGEN and her counsel with ample time to prepare a timely motion to extend the motions deadline. It appears as though claimant's untimely request for another extension of the motions deadline is an afterthought designed to obtain another chance to file a motion which she had no intention of filing prior to the deadline.

constructed out of conjecture and panic. The conclusion which claimant implicitly urges upon this Court is that the Swiss government arrested Brian DEGEN, and has detained him illegally so that the United States could obtain some tactical advantage in this forfeiture action. To support this "conspiracy theory," claimant's counsel declares to this Court that he is "informed" of a letter sent by the "United States Government" to a Swiss magistrate. The letter purportedly urges the magistrate to bring a criminal action against Brian DEGEN so that the within forfeiture action can proceed successfully.² See Stewart Affidavit, para. 6. Counsel further declares that he "is informed" that Mr. DEGEN's detention is in violation of Swiss law. See Stewart Affidavit, para. 11. The "information" provided to claimant's counsel by Mr. DEGEN's criminal defense counsel (Pierre de Preux) is unsupported and inherently unreliable. First, Mr. Stewart states, at paragraph 12 of his affidavit, that there is a serious language barrier which prevents clear communication between himself and Mr. de Preux. Second, the letter upon which Mr. Stewart rests his elaborate conspiracy theory has not been produced and is described ambiguously. Third, it is hardly surprising that Mr. DEGEN's criminal defense counsel believes his client is being detained improperly. In short, the "information" provided to claimant's counsel contains nothing of substance and can not form the basis for the conclusion urged by claimant.

Additionally, the detention of Brian DEGEN in a Swiss facility provides no basis for the requested extension. Brian DEGEN is not a claimant in this forfeiture action. He has no interest in any of the defendant properties. Karyn DEGEN, the only claimant, was not arrested and is apparently free to move about and assist her counsel in this action. At best,

² According to claimant's counsel, he is "informed" that such are the contents of the letter "essentially." Needless to say, the letter has not been produced.

Brian DEGEN's detention has compromised his availability as a witness in this action. Claimant had multiple opportunities to preserve whatever testimony she believed necessary to support her claims. The fact that a putative witness is presently unavailable to her, after being available for several years, does not warrant the requested extensions.³

As noted above, government counsel agreed, as a courtesy, to a 15-day extension of claimant's time for responding to the government's Motion for Summary Judgment. The Motion for Summary Judgment was filed on December 2, 1992. Claimant has, by filing the instant motion, managed to extend her response time far beyond anything contemplated by the Local Rules. The requested extension would allow claimant over three months to respond to a simple, straight-forward motion for summary judgment. The motion should be denied.

³ There is considerable doubt whether this Court should give consideration to any testimony proffered by Brian DEGEN. Brian DEGEN's interest in the defendant properties was forfeit to the United States because of his fugitive status. The policy considerations which underlie the application of the "Fugitive Disentitlement Doctrine" would apply with equal force to a fugitive's attempt to provide testimony in the same forfeiture action. Accordingly, Brian DEGEN's unavailability as a witness is irrelevant.

III

CONCLUSION

For the foregoing reasons, the motion of claimant to extend the motions deadline should be denied. Likewise, the motion to extend the time for responding to the government's motion should be denied.

MONTE N. STEWART

United States Attorney

/s/ Greg Addington

GREG ADDINGTON

Assistant United States Attorney

(Certificate of service omitted in printing)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

* * * * *

UNITED STATES OF AMERICA,) Case No. 93-16996

Plaintiff,)

v.)

REAL PROPERTY LOCATED)
AT INCLINE VILLAGE, et. al.,)

Defendants,)

BRIAN J. DEGEN and)
KARYN DEGEN)

Claimants.)

May 20, 1994

* * *

E.

**BRIAN DEGEN IS IMPRISONED IN THE RELATED
CRIMINAL CASE AND IS NO LONGER A FUGITIVE
FOR PURPOSES OF DISENTITLEMENT**

When the case was filed, BRIAN DEGEN was a resident of Verbier, Switzerland. He declined to return to face criminal prosecution and the Government moved for judgment under the fugitive disentitlement doctrine of *Molinaro v. New*

Jersey 396 U.S. 365, 90 S. Ct. 498, 24 L.Ed. 2d 586 (1970) as made applicable to civil cases in the Ninth Circuit by *Conforte v. Commissioner of Internal Revenue* 692 F. 2d. 587 (9th Cir. 1982). The court granted the motion (Excerpt 263) considering the factors which other courts have applied where the defendant has not been convicted of a crime (Excerpt 268). The third of five factors considered was whether the claimant had control over his fugitive status (Excerpt 271). The court found that Brian Degen had the power to return to the United States and considered this factor in granting judgment against him.

Brian Degen was arrested in case CR-N-89-24-ECR pending in the United States District Court for the District of Nevada which was transferred to Switzerland for prosecution.

The Government's involvement in the prosecution was underscored when an agent of the United States Drug Enforcement Agency stationed at Berne, Switzerland, escorted the Swiss magistrate to Reno, Nevada, to try the criminal case against Brian Degen at the United States Courthouse, 300 Booth Street and the office of the United States Attorney, 100 West Liberty Street, Reno, Nevada. The case was tried from September 13, 1993, through September 22, 1993, with the United States prosecutor, William Welch, in attendance from time to time. Witnesses were subpoenaed by the United States District Court for the District of Nevada and transported long distances at Government expense for the trial.

In *U.S. v. Timbers Preserve, Routt County, Colo.* 999 F.2d. 452 (10th cir 1993), the property owner, Pietri, who was then living in Laos, alleged that the Laotian government, at the request of the United States, seized his passport on February 27, 1992, and arrested him on April 1, 1992. When he was arrested, the government moved in the United States to strike his pleading in the civil forfeiture case on the ground that he was a fugitive. The government's motion was granted May 11, 1992. On May 20, 1992, Pietri was turned

over to United States officials in Thailand and on May 21, 1992, the court entered default judgment against Pietri as a fugitive.

In declining to reverse the district court's refusal to set aside the default, the Tenth Circuit noted: "There is absolutely no evidence of United States involvement in the events which allegedly took place in Laos." *U.S. v. Timbers Preserve, Routt County, Co.* 999 F. 2d 452,455-456 (1993).

What distinguishes BRIAN DEGENS case from *U.S. v. Timbers Preserve* (supra) as well as such cases as *U.S. v. Eng.*, 951 F. 2d 461, 464 (2nd cir. 1991) is that BRIAN is not being detained in Switzerland at the request of the United States; the United States has chosen to prosecute its case against BRIAN DEGEN under Swiss procedure. The United States is clearly an active participant, expending substantial resources in the prosecution.

Brian Degen was in custody in the related criminal proceeding, and was no longer a fugitive. Judgment based on disentitlement should be reversed.

* * *

(Certificate of service omitted in printing)

UNITED STATES COURT-OF-APPEALS
FOR THE NINTH CIRCUIT

(Title Omitted in Printing)

APPELLEE'S ANSWERING BRIEF

June 16, 1994

* * *

V

ARGUMENT

A. Brian Degen's Fugitive Status Precludes His
Participation in the Forfeiture Action.

The District Court entered its order granting summary judgment against the claims of Brian Degen on January 4, 1991 (CR2-27). Summary judgment was based upon application of the "fugitive disentitlement" doctrine. The doctrine of disentitlement bars a person who is a fugitive from justice "from us[ing] the resources of the civil legal system while disregarding its lawful orders in a related criminal action." *United States v. Eng*, 951 F.2d 461, 464 (2nd Cir. 1991); *See Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970). The doctrine of disentitlement has been applied by numerous Circuit Courts, including this Court, to civil *in rem* forfeiture cases with the consistent result that a claimant's fugitive status precludes the claimant from raising objections to a related civil forfeiture action. *United States*

v. \$129,374 in U.S. Currency, 769 F.2d 583, 586-87 (9th Cir. 1985), *cert. denied*, 474 U.S. 1086 (1986); *United States v. One Parcel of Real Estate*, 868 F.2d 1214, 1216 (11th Cir. 1989); *United States v. Timbers Preserve*, 999 F.2d 452, 453 (10th Cir. 1993); *United States v. Eng*, 951 F.2d at 464-66; *United States v. Pole No. 3172*, 852 F.2d 636, 643-44 (1st Cir. 1988); *In re Assets of Martin*, 1 F.3d 1351, 1356-57 (3d Cir. 1993).

To apply the doctrine, the United States must establish that the claimant is a fugitive and that the civil forfeiture is closely related to the criminal matter from which the claimant is a fugitive. *\$129,374*, 769 F.2d at 588; *Pole No 3172*, 852 F.2d 636.

In the present case, there is no question but that Brian Degen was a fugitive from the criminal prosecution when the District Court applied the disentitlement doctrine to bar Brian Degen's claims. There is likewise no question but that the civil forfeiture action is closely related to the criminal prosecution which Brian Degen has successfully avoided. In fact, Brian Degen does not appear to be arguing that he was not a fugitive in January 1991 or that the disentitlement doctrine was inappropriately applied at that time. Rather, Brian Degen appears to be suggesting that he is no longer a fugitive because he was arrested by Swiss authorities and is presently being prosecuted in Switzerland.^[9]

Brian Degen's suggestion is utterly without merit, there being no legal analysis which would support his conclusion

^[9] Brian Degen was arrested by Swiss authorities in November, 1992. The declaration of Degens' counsel (CR2-88) correctly states this uncontradicted fact. The remainder of the declaration is an imaginative attempt to blame the United States for Brian Degen's incarceration in Switzerland. The District Court properly gave no credence to the declaration's outlandish conclusions.

and, more to the point, no factual support in the record for such a conclusion.

While living in Switzerland, Brian Degen has apparently run afoul of Swiss law. He is incarcerated and is being prosecuted in Switzerland. He was arrested, in November, 1992, in Switzerland by Swiss authorities in connection with a purely Swiss prosecution. His incarceration in a Swiss prison has no affect on his current fugitive status. The Second Circuit confronted a similar situation in *United States v. Eng*, 951 F.2d at 463. In that case, Eng was indicted in New York while living in Hong Kong. He was detained in Hong Kong on suspicion of violating a local ordinance and thereafter resisted extradition to the United States. Since he had not done all within his power to return to the United States voluntarily and had, in fact, resisted attempts to compel his return, he was properly held to be fugitive for purposes of disentitlement. The mere fact that his movements were restricted on account of his incarceration was of no consequence. The Second Circuit stated that "one may flee though confined in another jurisdiction." *Eng*, 951 F.2d 464. See also *United States v. Catino*, 735 F.2d 718 (2d Cir. 1983), *cert denied*, 469 U.S. 855 (1984) (Incarceration in France did not preclude finding that defendant was a fugitive).

Similarly, in *United States v. Timbers Preserve, Routt County*, 999 F.2d at 455, the Tenth Circuit properly found that Pietri was a fugitive because he had voluntarily fled the United States to Laos in order to avoid prosecution in Colorado. Pietri claimed that he was prevented from returning to the United States on account of being incarcerated in a Laotian prison. The Tenth Circuit noted that Pietri was clearly a fugitive for purposes of disentitlement and agreed that Pietri's motion to set aside the default judgment, filed after Pietri was turned over to U.S. authorities, was properly denied because Pietri's own culpable

conduct caused the default. *Timbers Preserve*, 999 F.2d at 454.

Brian Degen attempts to distinguish his predicament by suggesting that the Swiss prosecution is actually a United States prosecution and that he is, therefore, no longer a fugitive. Such a suggestion is facially absurd.

Brian Degen remains a fugitive from the District of Nevada. If he returns to the United States, he will be arrested and prosecuted based upon the District of Nevada indictment. The United States has been unable to extradite [sic] Brian Degen because he is a Swiss citizen. While in Switzerland, Brian Degen has attracted the attention of the Swiss prosecutorial authorities and he is now incarcerated in a Swiss prison. During the pendency of the Swiss prosecution, the United States was obliged to respond to Swiss requests for information pursuant to the *Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters*, May 25, 1973, 27 U.S.T. 2019, T.I.A.S. 8302 (entered in force, January 23, 1977). Brian Degen has grossly misinterpreted the United States' necessary compliance with its treaty obligations as tantamount to having "tried" Brian Degen for violations of Swiss law. Brian Degen asserts that "the United States has chosen to prosecute its case against Brian Degen under Swiss procedure." *Appellant's Brief*, page 32, lines 5-7. Brian Degen has hopelessly confused himself in his zeal to portray the United States as the prosecuting entity. There is no mechanism whereby the United States can "choose" to prosecute its case against Brian Degen "under Swiss procedure." If Brian Degen is convicted by the Swiss authorities, he will be sentenced under Swiss law. If he returns to the United States, he must face the District of Nevada prosecution which he continues to avoid by remaining a fugitive.

The District Court properly applied the disentitlement doctrine to bar Brian Degen's participation as a claimant in

this forfeiture action. Nothing has changed Brian Degen's status as a fugitive and the District Court's 1991 analysis is not questioned by Brian Degen. Accordingly, the forfeiture of Brian Degen's interest in the various properties was properly entered.

* * *

(Certificate of service omitted in printing)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Title Omitted in Printing)

REPLY BRIEF OF THE APPELLANTS

July 15, 1994

* * *

E.

**BRIAN DEGEN IS IMPRISONED IN THE RELATED
CRIMINAL CASE AND IS NO LONGER A FUGITIVE
FOR PURPOSES OF DISENTITLEMENT**

BRIAN DEGEN is being held without charges in Switzerland. The Swiss Government is holding him at the request of the United States. Included as an addendum hereto is a copy of a letter dated February 27, 1990, from the U.S. Department of Justice to the Federal Office for Police Matters in Berne, Switzerland, which states in part:

"... our office respectfully requests the transfer to Switzerland of the prosecution of Brian John Degen on the federal United States charges for which he was indicted in the District of Nevada."

On February 5, 1992, the U.S. Department of Justice again wrote the Federal Office for Police Matters in Bern, Switzerland, "Re: Transfer of Brian J. Degen Prosecution to

Switzerland...." A copy is also included as an addendum hereto. The letter states in part:

"... can you advise us if or when it can be expected that DEGEN will be arrested, what charges he will face and what timetable for trial may be anticipated?"

"We would emphasize the importance of this case to establishing the transfer of prosecution as an realistic method for Switzerland to guard it citizens...."

The government is less than candid at Note 9 on Page 15, the second paragraph of Page 17 and the first paragraph of Page 18. There is reason to believe that BRIAN DEGEN was arrested November 19, 1992, as a result of pressure from the United States not because he had "attracted the attention of the Swiss prosecutorial authorities." Obviously, United States is doing more than "necessary compliance with its treaty obligations." The government does not point out what treaty obligation requires them to conduct BRIAN DEGEN'S Swiss criminal trial at the United States Courthouse at 300 Booth Street, Reno, Nevada or at the United States Attorney's Office at 100 West Liberty Street, Reno, Nevada.

The United States has transferred the Nevada criminal proceeding to Switzerland and is actively engaged in the prosecution of Brian Degen. He is incarcerated at the request of the United States in the parallel criminal proceeding and is not a fugitive. He should no longer be disentitled from entering an appearance in the parallel civil forfeiture proceeding.

* * *

(Certificate of service omitted in printing)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(Title Omitted in Printing)

APPELLANTS MOTION TO
SUPPLEMENT THE RECORD

December 12, 1994

COME now Appellants, BRIAN and KARYN DEGEN, through counsel, and move the Court to Supplement the Record.

This motion is made pursuant to 9th Circuit Rule 28J upon the ground that the letters and transcript will aid the court at argument.

DATED this 9th day of December, 1994.

DANIEL W. STEWART, LTD.
245 East Liberty, Suite 450
Post Office Box 3021
Reno, Nevada 89505-3021
Attorney for Appellants
Brian J. Degen and Karyn Degen

**POINTS AND AUTHORITIES IN
SUPPORT OF MOTION
TO SUPPLEMENT THE RECORD**

This is an appeal from Summary Judgment. The transcript of the hearing wherein various matters relating to the Response to the Motion for Summary Judgment were raised and ruled upon was not included in the record because it was not thought, at that time, to be unnecessary. It now appears that counsel will be referring to that hearing in oral argument and it would assist the Court to have the transcript as part of the record.

Also, two (2) letters which were attached as an addendum to the Appellants' Reply Brief and will be discussed in oral argument are sought to be included in the record.

Further, a letter and a partial record of the proceedings held before the Swiss Magistrate at the United States Attorney's Office on September 13, 1993, is sought to be included to show the nature and extent of the United States involvement with the prosecution in Switzerland, evidence which was not available to the trial judge and a reason why the case ought to be remanded so that the judge can consider it in the first instance.

Appellants' counsel has called counsel for the government who has declined to stipulate as he feels the material is not properly includable in the record.

DATED this 9th day of December, 1994.

DANIEL W. STEWART, LTD.
245 East Liberty, Suite 450
Post Office Box 3021
Reno, Nevada 89505-3021
Attorney for Appellants
Brian J. Degen and Karyn Degen

* * *

(Affidavit of service omitted in printing)

SUPREME COURT OF THE UNITED STATES

No. 95-173

BRIAN J. DEGEN, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

The petition for a writ of certiorari is granted. The brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 23, 1996. The brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 22, 1996. A reply brief, if any, is to be filed pursuant to Rule 25.3. Rule 29.2 does not apply.

January 12, 1996